

THE
Parsons Counsellor,
WITH THE
LAW

OF
TITHES or TITHING.

in Two Books.

The First sheweth, the Order every Parson, Vicar, &c. ought to observe in obtaining a *Spiritual Preferment*, and what *Duties* are incumbent upon him after the taking the same, and many other things necessary for every CLERGY-MAN to know and observe.

The Second shews, in what manner all Sorts of *Tithes*, *Offerings*, *Mortuaries*, and other *Church-Duties* are to be paid, as well in LONDON as elsewhere, and as well by the *Canons Common* and *Statute-Laws*, and in what Courts and manner they may be recovered, what *Charges* they are subject to, and many other things concerning the same, necessary for CLERGY-MEN and all others to know.

Libris Jonath Gourelow
Math. Simplici Sor

The Third Edition corrected, and enlarged in many particulars through the whole Book, with a Table, &c.

Written by Sir SIMON DEGGE. Kt.

L O N D O N,

Printed by the Assigns of Richard and Edward Atkins Esquires,
for Henry Twissford in Vine-Court Middle Temple. 1681.

I do allow the Re-printing the
**PARSONS COUNSEL-
LOR** as it is now corrected
and Inlarged.

Jan. 2.
1676.

Fra. North.

TO THE
RIGHT HONOURABLE
AND
RIGHT REVEREND
FATHER in GOD
THOMAS,

Lord Bishop of
Lichfield and Coventry.

My Lord,

I Thought to have sent this
Trifle into the World
without Patron or Authors
Name to it; but 'tis well known,
how scandalous it is to that
Child whose Parent is ashamed

The Epistle.

to own it ; I therefore resolved to run the Censure of a critical World: And then observing how ancient Dedications have been both by Greek and Latine Authors , and that they are continued to this day throughout all Christendom, I resolved not to be singular: and considering, that this little Undertaking was performed at the Request of some Reverend Clergymen of Your Lordships Diocess, and that it was mended up to what it is now presented to your Lordship there likewise, I conceived it could not challenge the Patronage of any other

Dedicatory.

other more properly than of
Your Lordship; and therefore
such as it is, I here humbly
present it to Your Lordship.

My Lord, at first I designed
no more but the Second Part
of what it now is: but obser-
ving Your Lordships diligent
and great care at your Lord-
ships Primary Visitation at
Derby against Simony, Dila-
pidations and Nonresidence,
the three great Pests in the
Church, I added three Chap-
ters upon those Subjects; and
after adding one thing after a-
nother, it came to make a di-
stinct Part of this Work alone.

My

The Epistle.

My Lord, Your Lordship has had many Honourable and Worthy Predecessors, and I cannot forbear to mention to Your Lordship Your immediate Predecessor my Lord Bishop Hacket, with what indefatigable Industry did he repair, or rather re-edifie the Church at Lichfield, which he happily lived to finish? A Work could hardly have been performed by any other. How circumspectly, prudently and diligently did he govern his Church, never absenting himself, unless in his Majestie's and Countreys Service? How constantly did he

Dedicatory.

*he visit and preach through his
Diocese? A Religious Pat-
tern for all his Clergy. What
great Insight had he both in
the Civil, Canon and Common
Laws, that related to the
Church Government? How
oft did he sit in his Consistory
to see Justice done? Nay, what
did he neglect, that became a
worthy Prelate to do? and for
his deep and profound Learning
in his Function, certainly few
exceeded him, if I have any
Judgment. My Lord, I have
observed three things perpetuate
mens memory to posterity, Chil-
dren, Learned Writings, and
A 4 publick*

The Epistle

publick and eminent Buildings,
he was fortunate in them all;
he has left a Worthy Son to in-
herit his Name, Virtue, and
Temporal Estate; he has left
many Learned Works for the
benefit of Posterity, whereof
some are already made publick;
and he has made himself no less
eminent by his publick Build-
ings, witness his Cathedral
Church at Lichfield, and Tri-
nity Colledge in Cambridge,
where he had his Education;
besides many other Works of Pi-
ety and Charity in those few
years he was Bishop. My
Lord, God hath not yet blest
you

Dedicatory.

you with Children, but may in good time to preserve Your Name: and I have heard Your Lordship intends some eminent Works of the Publick; and that Your Lordship hath resolved to go on, where Your Predecessor left, in Building a Palace for Your self and Successors; I have great reason to believe, having heard Your Lordship so often declare You would do it; and having laid your hand to the Plow in preparing some Materials towards it, I know you will not look back: I have heard Your Lordship declare how much you delight in Hospitality, which

The Epistle

Tit.
1. 8.

*which can never be so splendid
as in a Palace of Your own
Building: And hereby Your
Lordship will make Your self
as eminent in the next Age, as
Your Worthy Predecessor is in
the present, than which nothing
can be greater satisfaction to all,
but chiefly to,*

My Honoured good Lord,
Your Lordships most du-
tiful Son, and most obe-
dient Servant.

S. Degge.

To the Parsons, Vicars,
and the rest of the Re-
verend Clergy of the
Church of England.

YOur kind acceptance of
the former Impressions of
this Book has encoura-
ged me again to appear in pub-
lick. The first was hurried to
the Press so hastily, that I had
not time seriously to peruse it,
whereby some things were slipt
in the Copy; and my being far
from the Press occasioned many
mistakes by the Printer. In
this and the later something
more care has been taken.
The

1
The only essential oversight in
the first Impression (which I
have yet discovered) was in
the Sixth Chapter of the First
Book, which I must still de-
fire may be corrected by this.
I added many things to the Se-
cond Edition, with three whole
Chapters: and some things to
this. Your continued kind ac-
ceptance makes me think my la-
bour well bestowed.

Et sic Valet.

S. D,

TO THE
Courteous Reader.

IT is observed in the se-^{Co. 2.}
cond part of Sir *Edward*^{44. b.}
Cokes Reports in the Bi-
shop of *Winchesters* case, that
there were two great persecu-
tions of the Christian Religi-
on, the one under *Dioclesian*,
the other under *Julian* the A-
postate; The first by mur-
dering the Priests, that by
their preaching advanced the
Christian Religion; the latter
by spoiling the Church of its
Revenues. The former con-
trary to expectation advanced,
and not suppressed Religion:
for it has proved in all Ages,
that

To the Reader.

that *sanguis Martyrum est semen Ecclesiæ*; for the patient suffering of so many Martyrs of the Primitive Christians gave the World a sufficient Testimony, that those poor Christians had some extraordinary Divine assistance to undergo with patience so much Cruelty, that no others durst put themselves unto the trial of. But the taking away the Revenues of the Church Martyred the Priesthood it self, and struck at the foundation: for when People saw there was nothing left but persecutions, no sustenance for those that Ministred at the Altar, it discouraged them to breed their Children up to a study that advanced them to nothing but danger; which

To the Reader.

which introduced great ignorance of the true Knowledge of God and Religion: so that as one killed the Priests, the other destroyed the very Priesthood it self. And though the Apostle St. *Paul* got his Living by his labour, that he might not become burthensome to his Profelytes; yet the same Apostle tells us, that *the Labourer is worthy of his hire*, and that by the Law of *Moses*, *the Ox was not to be muzzled that treads forth the Corn*: and by way of Expostulation in another place says, *who goes on warfare at his own charge? who plants a Vineard and eats not of the fruit thereof? and who feeds a Flock, and eats not of the milk thereof? for he that ploweth should*

2 Cor. 11.
9.

2 Cor. 12.
12, 14, 16.
Mat. 10.
10.
1 Tim. 5.
18.

2 Cor. 9.
7, 9, 10.

To the Reader.

*Should plow in hope, and he that
thresheth should be partaker of
his hope. And again says he, is
it a great thing, that those that
sow to you spiritual things, should
reap carnal? And do you not
know (says the same Apostle)
that they that Minister about
holy things, live of the things of
the Temple? and that they that
wait at the Altar, are partakers
with the Altar? for so hath the
Lord ordained, that they that
preach the Gospel, should live of
the Gospel. What effect this
Doctrine wrought amongst the
Primitive Christians, you may
read in the fourth Chapter of
the Acts of the Apostles, where
it is said, that as many as were
possessors of Houses or Lands sold
them, and brought the prices of
things*

To the Reader.

things that were sold, and laid them down at the Apostles feet; and distribution was made to every man according as he had need. But the Christians of this present Age are so far from selling their Houses and Lands, and laying the price at the Apostles feet, that they will rather detain that from the Clergy, which by Law and Right is due to them. But, certainly, had the sincerity of the Primitive Christians continued, I should never have needed to have set pen to paper upon this subject I am now about, which is *the Law of Tithes or Tithing*: a duty established by the Laws of this, as of other Nations, for the maintenance of the secular Clergy, and for their sake it is
· a that

To the Reader.

that I have undertaken this work. There was a Tithing Table published many years ago by a Batchelor of Laws, wherein he has learnedly set forth the manner of Tithing by the Canon and Ecclesiastical Laws: but those Laws and the Common Laws of this Realm differing in many things, wherein the Common Law is to be preferred; that Tithing Table has often led both Parson and Parishioners into many errors: besides the several discharges from payment of Tithes, either absolutely, or *sub modo*, of divers Lands in *England*, by the Statutes or Common Laws, makes great alteration here from the Canon Laws. To rectifie which,

To the Reader.

which, and, as near as may be, to reconcile the Canon and Common Laws, I did by the perswasion of some Reverend Divines first make some Animadversions upon that Tithing Table: but when I had done that, considering there were many more things in relation to Tithing, that I could not conveniently apply to the Text, concerning Prescriptions, Customs, Compositions, and other privileges, besides the Laws concerning Offerings, Mortuaries, and other Church Duties, fit for all men to know, as well Lay as Clergy, I adventured upon this larger Work. Which I the rather did, because I do not find any other that hath published any compleat work

a a in

To the Reader.

in this kind, or to reconcile the Common and Canon Laws, that kind of learning lying dispersed in our Law Books; I have therefore in favour of the Parsons and Vicars, taken up a former resolution, and adventured to expose my self to the publick censure. And though I cannot promise any perfection in this work, yet I dare presume to say, it is the most perfect work of this nature yet extant; though I can pretend to nothing of it but the errors and mistakes, which I will be thankfull to any body that will friendly correct, that I may make it more exact in a second Edition, if I have encouragement. The hindrance of conversing with the
the

To the Reader.

the learned, by reason of my confinement to the countrey, and not having access to any publick Libraries, hath hindered me of some helps I might have had thereby. Perhaps it may not be so acceptable to those in whose favour I have writ it, because it comes from the pen of one who professes himself a common Lawyer: But in my Judgment, in this Nation, wherein the common Laws and customes of the countrey prevail against the Canon and Ecclesiastical Laws; this subject is not altogether improper, if not most proper for a common Lawyer. And truly I have through this discourse dealt with as impartial an hand as the matter would

To the Reader.

admit. And though the Clergy may think it to their prejudice, that I have at large set forth the several discharges by which lands are freed from the payment of Tithes; yet in that I have given them a clear light, which lands cannot be so privileged, and what Prescriptions and *modus decimandi* is not good, being well assured that there are more lands at this day escape payment of Tithes upon pretence of some privilege, to which they have no right, than those that pay Tithes, and might legally be discharged. But when I have done my best endeavour to serve the Reverend Clergy, I cannot give them Incouragement to depend upon

To the Reader.

on their own Judgments, grounded upon any thing here writ; for though this may suffice to give them some light, what shall be due to them, yet I cannot hope by any thing I can write to make them Lawyers; for many *Qære's* will arise, that no foresight of mine could give an Answer to: but this benefit I hope they will receive by my labours, that they may put their case, and make their doubts known more pertinent-ly to the learned. I had no sooner finished this little Tract concerning Tithes, but I considered there were many other things almost as useful for a Clergy man to know, as the Law of Tithes: And

To the Reader.

though Mr. *Hughes* of *Grays-Inn* many years since published a learned Tract which he intituled the *Parsons Law*; yet there are many more things necessary for a Clergyman to know, that are there only briefly or not at all touched upon; and of such force, that they must either be performed and observed to make a man a compleat Parson, or to make him none, though never so exactly instituted and inducted, if omitted. I have therefore in the first place, before I come to the Law of Tithes, shewed, what Simony is, and what danger those run themselves into, that are guilty of it; what things every Parson, Vicar, &c. is to do before,
at,

To the Reader.

at, and after his Institution and Induction, to make him a compleat Parson, &c. what Dilapidations are, and how punishable; what Priviledges the Clergy have at this day by the Laws of *England*; what charges and payments their Tithe and Church-livings are subject unto, what Causes of Deprivation have been allowed of by the Laws of *England*; what Leases they may take or set, and what Statutes they may fall in danger of; and of Pluralities, and who is qualified to have them, and in what manner to be accepted; Non-residence, and many other things necessary for every *Clergy-man* to know. I have divided the whole into Two Books,

To the Reader.

Books, and them again into several Chapters and Paragraphs, and added a short Table for the more ready finding of any thing in either. I have likewise added a List or Catalogue of all the Abbeyes and Priories, that were valued in the Kings Books at 200 *l. per ann.* or upwards, and which were dissolved by the Statute of 31 *H. 8.* the Lands of which can only pretend to any privilege to be discharged of the payment of Tithes; in which I have rather chosen to write after Mr. *Dugdale*, being a sure Author, than Mr. *Speed*, in whom I have observed many Mistakes. I must beg the Readers patience to correct the Mistakes of the
Printer

To the Reader.

Printer (which are too many
by reason of my absence from
the Press :) and for my own
I shall take it kindly from any
body, that will in a friendly
manner inform me of them;
for *Humanum est errare* ; and
though I may have cause to
be ashamed of them, yet I
will never be ashamed to
amend.

Vale.

The

The Contents.

The Contents of the several Chapters contained in the first part of this Book Intituled the *Parsons Counsellor*.

who may be a Parson.

How he must proceed in taking a Living.

Jure Patronatus.

Pluralities.

Simony.

what he is to do, at, before, and after Institution and Induction.

Non-residence.]

Dilapidations.

CH A P. 1. *sheweth, who may, or may not be a Parson, Vicar, &c.*

Chap. 2. *sheweth, how one that is a Person fitly qualified to be a Parson, Vicar, &c. ought to proceed in the obtaining and accepting of a Benefice.*

Chap. 3. *shews, in what cases 'tis necessary for the Bishop to have a Jure Patronatus, and how to proceed in the same, and what is the force and effect thereof.*

Chap. 4. *shews, how the Law stood concerning Pluralities before the Statute of 21 H.8. who are qualified within that Law to have Pluralities, and how they ought to behave themselves in taking the second Livings, so that the first may not be made void.*

Chap. 5. *shews, what Simony is, and who shall be said to be guilty of it, and what are the dangers ensuing thereupon.*

Chap. 6. *shews, what one is to do before and at Institution, and after Induction, to make himself a compleat Parson.*

Chap. 7. *shews, what is required further of Parsons, &c. after Induction, and what Nonresidence is, and the dangers incurred thereby, and what matters will excuse the same.*

Chap. 8. *shews, what shall be said to be Dilapidations, and how the same are remedied and punished.*

Chap.

The Contents.

- Chap. 9. *shews, for what Cause a Parson, Vicar, &c. may be deprived, according to the Rules of the Common Laws.*
- Chap. 10. *shews, what Leases a Parson, Vicar, &c. may make of his Glebe and Tithes, and what Farms he may, or may not take, and within the danger of what other Statutes they may fall.*
- Chap. 11. *shews, what Priviledges are allowed to the Clergy in Holy Orders by the Statute and Common Laws of this Realm, and what are pretended to by the Ecclesiastical Laws.*
- Chap. 12. *shews, how the Law stands concerning Churches, Chappels, and Church-yards, in whom the Freehold is, and how the Churches and Chappels are to be repaired, and concerning the Seats, Burials, Tombs, Coats of Arms, and other Ensigns of Honour in memory of the dead; and of the Church-Ornaments, and at whose charge to be provided; and what remedy for trespasses in the Church, Church-yard, or in breaking up of Tombs, taking, carrying away or imbecilling any of the Goods, or Ornaments of the Church, &c.*
- Chap. 13. *treats of Parsonages, Vicarages, Sine Cura's, and Donatives, and of the Endowments of Vicarages, and how, and in what Cases a Parsonage and the Vicarage are to be reunited, and many other things relating to Parsonages, Vicarages, Donatives, and Sine-Cura's.*
- Chap.

The Contents.

Chap. 14. *shews, what Resignations and Permutations are, in what manner they may be made, and other matters relating to them.*

The Contents of the several Chapters contained in the second part of this Book, Intituled, the *Law of Tithes, or Tithing.*

*Quid, quotu-
plex, & quo
modo debet.*

*By whom, and
to whom due.*

*what things are
Tithable, Corn,
Hay, &c.
wood.*

Herbage.

*Calves, Milk
Cheese, Wool,
Lambs, Pigs,
&c.*

*Seeds, Fruit,
Mast, Bees,
Honey.*

*Things feræ na-
turæ.*

Mills.

Personal Tithes.

CHAP. 1. *shews, what Tithes are, the se-
veral sorts and kinds thereof, and how
the same become due.*

Chap. 2. *shews, by whom, and to whom
Tithes ought to be paid.*

Chap. 3. *shews, of what things Tithes are
due to be paid, and in what manner the
Tithes of Corn, Hay, &c. are to be paid.*

Chap. 4. *shews, where, and in what cases the
Tithes of wood ought to be paid.*

Chap. 5. *shews, where Tithes are due for
Herbage or Agistment of Cattle, and who
is to pay the same.*

Chap. 6. *shews, where, and in what manner
the Tithes of Calves, Milk, Cheese, Wool,
Lambs, Pigs, &c. are payable.*

Chap. 7. *shews, in what manner the Tithes of
Seeds, Fruit, Mast, Bees, &c. are to be paid.*

Chap. 8. *shews, where and in what manner
the Tithes of Pigeons, Conies, Fish, Deer,
and other Birds and Beasts feræ naturæ;
are tithable.*

Chap. 9. *shews, of what nature the Tithes of
Mills are, and in what cases payable.*

Chap. 10. *treats of the Tithes of Hawking,
Hunting, Fishing, Fowling, &c. and other
personal Tithes.*

Chap.

The Contents.

- Chap. 11. treats of the Tithes of Ducks, Domestick
Geese, Swans, Turkeys, and other domestick Birds.
Fowls and Birds.
- Chap. 12. shews, of what things Tithes are not
due by the Common Law of this Realm. Of what things
Tithes are not
payable.
- Chap. 13. shews, what force Customs have as
well in the form and manner of Tithing, as
in the discharging the payment thereof, and
the difference between Custom and Prescrip-
tion. Customs.
- Chap. 14. shews, what Priviledges the Par-
son, Vicar, &c. have in the Grounds where
the Tithes arise, for the drying, making
and carrying away the same. Interests in the
Lands.
- Chap. 15. shews, to what charges the Glebe
and Tithes are subject and liable. To what charge
subject.
- Chap. 16. shews, how far Prescription will
prevail in the manner of Tithing, and in
what cases a modus decimandi, will bind
the Parson, &c. Modus deci-
mandi.
- Chap. 17. shews, how a modus decimandi
may be destroyed. How to be de-
stroyed.
- Chap. 18. shews, by what conveyances, and
by what names Tithes may be granted,
demised, &c. and what Demises and
Leases made by Parsons, Vicars, and other
Ecclesiasticks, &c. are good. How to be con-
veyed.
Of Leases.
- Chap. 19. shews, what barren Lands are
freed from payment of Tithes within the
Statute of 2 E. 6. Barren Ground.
- Chap. 20. shews, what a Real composition is,
and in what Cases Lands shall be freed
from the payment of Tithes thereby. Real Composi-
tions.
- Chap.

The Contents.

<i>Monastery Lands.</i>	Chap. 21. <i>shews, what Monastery Lands are, or may be freed from the payment of Tithes.</i>
<i>Personal Tithes.</i>	Chap. 22. <i>shews, what personal Tithes are, and in what Cases due and payable.</i>
<i>Oblations.</i>	Chap. 23. <i>shews, what Oblations, Offerings, &c. are, and where due and payable.</i>
<i>Mortuaries.</i>	Chap. 24. <i>shews, what Mortuaries are, and in what Cases they are due and payable.</i>
<i>London.</i>	Chap. 25. <i>shews, how Tithes are to be paid in London, and several resolutions upon the Statute, made for the payment thereof.</i>
<i>How recoverable.</i>	Chap. 26. <i>shews, in what Courts, and in what manner Tithes may be sued for, and in what Cases Prohibitions lye for the staying of Suits for Tithes in the Ecclesiastical Courts, and how to proceed therein.</i>
<i>Prohibitions.</i>	

Directions in the Marginal references.

Note, that in my references to printed Books in this Treatise, I for the most part refer to the page and part of the page where the matter is to be found in this manner, if the matter be at the upper end of the page I mark it with three pricks thus ∴ if in the middle thus .. if at the lower part thus ∙∙ and where the Book is numbred by Fol. I add the *A*, or the *B*. side, as it happens.



THE

Parsons

COUNSELLOR.

CHAP. I.

*The First Chapter shews, Who may, or
who may not, be a Parson, Vicar, &c.*



AVING taken upon me to
be the Parsons Counsellor,
it is necessary in the First
place, to shew who may
be a Parson, Vicar, &c.

And by a Statute made
in the Fourteenth year of the King's Ma-
jesty that now is, all are made incapable
of being admitted to any Parsonage, or
Vicarage, Benefice, or other Ecclesiastical

14 Car. 1. cap.
4.

B Promo-

Promotion.

Promotion, Preferment, or Dignity whatsoever, unless such person have Episcopal Ordination; and if any shall presume to be admitted, not having such Ordination, or shall presume to Administer the Sacrament of the Lords Supper not being so Ordained, he is to forfeit an hundred pounds.

Concil. Arelat.

Can. 1 Concil.

Constant. ca.

14. & 15.

Concilium

Neocæsar. ca.

11.

By divers ancient Canons of the Church, no man was to be a Deacon before he was twenty five years of age, nor a Priest before he should attain the age of thirty years; but notwithstanding the Canons they were frequently dispensed with, and made Priests younger.

St. 13 Eliz.

cap. 12.

And by a Statute made in the thirteenth year of Queen Elizabeth it is Enacted, that none shall be made Minister, or admitted to Preach or Administer the Sacraments being under the Age of twenty four years; nor unless he first bring to the Bishop of that Diocess, from men known to the Bishop to be of sound Religion, a Testimonial both of his honest life, and of his professing the Doctrine expressed in the Thirty nine Articles; And unless he be able to answer and render to the Ordinary an accompt of his Faith in Latin, according to the said Articles, or have a special gift and ability to be a Preacher: Nor shall be admitted to the order of Deacon or Ministry, unless he shall first subscribe to the said Articles,

By implication this Statute allows a man to be made a Priest at twenty four, whereas by the Canons he could not be a Priest before Thirty years of age.

And

And all dispensations in this case are made void by the same Statute.

So that upon the whole matter, none can be a Priest before he is 24 years of age, nor none can be a Parson before he is a Priest.

And by divers antient Canons, and by Can. Jac. 33. Canons of our own, none ought to be distinct. 70. ordained a Priest before he have a title; c^p. Nemine. that is, a Presentment to a Parsonage, Vicarage or a Curacy.

And by another Provincial Canon of our own, those that have been guilty of *Cap. Imprimis* Homicide, or that have been advocates *in causa Sanguinis*; those that are guilty of Simony, or makers or solicitors of Simoniackal contracts, witchcraft, burners of Churches, cannot be Priests without special dispensation, nor by consequence Parsons or Vicars.

And by another Provincial Canon of *Cap. Cum* our own, those that are guilty of Simony, Homicide, persons excommunicate, **Distinctio.* **usurers, sacrilegious persons, Incendiaries, vel *Falsarios,* may not be admitted into holy orders, and by consequence *47 Co. 5. 58. 2. Perjury, tor- gery dist. 50. Si Episcopus. 38 E. 3. 2. 2. 2.* may not be Parsons, Vicars, &c.

And by a Canon in the Council of Nice, a man that voluntarily castrated himself might not be a Priest; but if it were done by Enemies, or by the advice of Physicians for health sake, it was no disability. *Cap. Eos qui de non. Dyer. 293. 5 H. 7. 20.*

Bastards cannot be Priests without dispensation.

penfation nor by consequence Parsons.

14 H.7.28.b.

15 H.7.7.b.

5 H.7.20.a.

A Villain cannot be a Parfon, and if he be prefented to a Living, the Bifhop may refufe him.

Co.5.58.a.

A Mifcreant that does not believe the truth, an Infidel that does not believe at all, a Jew, Schifmatick or Heretick that do not believe aright, ought not to be Parsons, and if Inducted ought to be deprived; and fo if the party be irreligious or illiterate, fo if the party Prefented be *mere laicus* or *utlawed*.

And the Bifhop may refufe a Clerk *quia criminofus*, for any of the crimes aforefaid, though the party be not convicted, fo the Bifhop be certain of the truth thereof.

Co.5.58.a.

And all things that are juft caufes to deprive a Clerk are juft caufes to refufe a Clerk when Prefented.

Ibid.

But it is no good caufe to refufe a Clerk becaufe he is a player at unlawful games, or a haunter of Taverns. Becaufe thefe are not *malum in fe*, but *malum prohibitum*.

Lindwood.

Cap.Cum a ju-

re inhibitum.

Concil. Late-

ran. Can. 31.

Albany vers

Evefque

Lichf.M. 26,&

27 Eliz. C. B.

fo. 2023.

And the Son cannot without a difpenfation be Parfon of the fame Church that his Father was incumbent of the next before him.

If a man cannot fpeak fuch Language as the Parifhioners underftand, he ought not to be admitted Parfon of fuch a Parifh, but may be refufed by the Bifhop; for to
be

be illiterate and not to be understood, is all one to the Parishioners. And when the blind leads the blind, both fall into the pit.

The Bishop cannot refuse a Clerk because he wants a testimonial.

Lucas vers
Evelque.
Bath. P. 3 El.
per Bendloes.
4 Inst. 338.
1 Leonard.
130.

But it should seem that if the Bishop does admit and institute any person into a living that lies under any of these incapacities, the Church is full *de facto* till sentence of deprivation, nullity or declaratory, as the case requires, and no lapse incurs.

An Alien born at this day, I take it cannot be a Parson, Vicar, &c. nor is capable of any Spiritual preferment, without the Kings special Licence, and the Bishop may deny to admit and institute him, as Sir *Edward Coke* conceives.

4. Inst. 338.
Star. 3 R. 2. c. 3.
7 R. 2. cap. 12.
5 R. 2. nu. 91.
6 R. 2. nu. 31.
10 R. 2. nu. 20.
1 H. 5. cap. 7.

By a Canon in the third Counsel of *Can. 23.*
Lateran under *Alexander* the third, it was decreed that none should be Parson of a Parish, under 25 years of age.

C H A P. II.

The second Chapter shews, how one that is fitly qualified to be a Parson, ought to behave himself in obtaining a Living.

A Parson so qualified as the Law requires, must without any corrupt or Simoniack Contract, obtain a Presentation from the right and undoubted Patron of the Church, whereof he designs to be Parson; which may be in this Form.

The Form of a
Presentation.
See other Forms
of presentations
Regist. orig.
302. 303.

Reverendo in Christo patri & domino T. divina permissione L. & C. Episcopo, ejusve Vicario in spiritualibus generali A. B. Armiger, indubitatus Patronus Ecclesie parochialis de C. in Comitatu D. salutem in Domino sempiternam. Ad Ecclesiam de C. predictam vestre diocesis, modo per mortem (if void by the death of the last Incumbent;) but if it be by resignation, then you must say (*modo per resignationem*) but if the Church be void by the last Incumbent's being made Bishop, or by taking a second Living, not being qualified, then you may say (*per Cessionem*) or as the special matter is, or if by deprivation, then you must say (*per deprivationem*) and then proceed E. F. *ultimi incumbentis ibidem jam vacantem, & ad meam donationem pleno jure spectantem, dilectum mihi in Christo G. H. Clericum in Artibus Magistrum, paternitati*

ternitati vestre presento, humiliter supplicans, quatenus prefatum G. H. ad dictam Ecclesiam admittere, eumque Rectorem ejusdem Ecclesie instituire cum suis juribus & pertinentiis universis, ceteraque expedire & peragere, que vestra in hac parte incumbunt officio pastoralis, dignemini cum favore. In cujus rei Testimonium his presentibus sigillum meum apposui: Datum primo die M. anno regni domini nostri Caroli secundi Dei gratia, Angliæ, Scotiæ, Franciæ, & Hiberniæ, Regis, fidei defensoris, &c. vicesimo octavo, Annoque Domini 1675.

And note that the King, or any other Patron may Present by word of mouth, or by letter, and it is as good and effectual as one in form. 1 Inst. 120. b. 2
F. 201. Imp. 60

As soon as a Clerk has obtained such Presentation, it behoves him with all convenient speed, and within six months after the Church became void by Death, Creation or Cession of the last Incumbent, of which avoidances the Patron is at his peril to take notice, or within six months after notice legally given to the Patron by the Ordinary of the Church becoming void by Deprivation, or Resignation, tender his Presentation to the Bishop of that Diocese within which the Church is, or to his Vicar-general, or in the vacation, when there is no Bishop of such Diocese, to the Guardians of the Spiritualities, to whom the Law allows a reasonable time How to proceed upon the Presentation.
22 H. 6. 29. b. 1.
Doct & Stud. l. 2. c. 31.
Dyer 327. p. 7.
Rol. 2. 364.
b. f.
What time the Bishop may take to examine a Clerk.
Lindwood chap. Cum secundum Apostolum.

1 H. 7. 9. b.

*Hob. 317.

15 H. 7. 7. b.

† Can. 95.

The Canon Law allows two months; but the Common Law, which in all these Cases is to be preferred, allows only convenient time.

Admission and Institution

Co. 4. 79. a.

32 H. 6. 28. b.

33 H. 6. 24. a.

38 H. 6. 15. a.

Knowls ver^b

Dobbins P. 21.

Jac. C. B.

Carter ver^s.

Crofts 27 El.

C. B.

Who may make

Induction.

* Callis ver^s.

Launt.

† 11 H. 4. 9. b.

Parson Den-

nye's Calc.

H. 6. Jac. 10.

190. B. R.

Plow. 528. b.

How induction

is to be made.

to examine the abilities of the Clerk. For the Ordinary is not bound as soon as a Clerk renders his presentation to dispatch his business*; but if he be busie about the affairs of his Church, he may make the Clerk to stay till he hath done, or may appoint him a convenient time to attend him for his approbation.

† By the ancient Canons the Bishop had two months time to consider of the ability and disability of the Clerk, but by a Canon made in the time of King James, that time is abbreviated to one month.

Then if the Ordinary, &c. upon the examination of the Clerk, find him fit in all points, as above in the First Chapter is directed, then he admits him in these words,

Admitto te habilem, &c. And thereupon the Ordinary institutes him in these words, *Instituo te Rectorem Ecclesie parochialis de C. & habere curam animarum:*

& accipe curam tuam & meam. And this the Bishop may do as well out of his Diocess as within it, for as to this matter it is not local, but follows the person of the Bishop whithersoever he goes. When the Bishop has instituted the Clerk, the Ordinary, or, &c. makes a mandate under Seal to the Archdeacon of the place, * or to such other Clergy men as he pleases, to induct the Clerk. And it may be made † by the Dean and Chapter, but not by the Patron: for though by the Institution

tion

Admission &c.

Institution.

tion the Church is full against all persons save the King, yet he is not compleat Parson till Induction, for by the Institution he is admitted *ad officium* to pray and preach, yet he is not intitled *ad beneficium*, until he be formally inducted, which may be done by the delivering of the Ring of the Church door, or latch of the Church gate, or by delivery of a Clod or Turf, and Twig of the Glebe, but the most common and usual way is, and therefore the safest, by delivery of the Bell-rope to the new instituted Clerk, and he tolling the Bell: And the Archdeacon, if he do it, is to take but 40 *d.* for doing of it.

Lindsey vers.
Dodson M. 9.
Jac. C. B.

*le malieur voy a
fair Induction*

33 H. 6. 24. 2.
Linwood c.
Item quia
Archidiaconi
&c.

And an Action of the case will lye against the Archdeacon, if he refuse or neglect to do his duty, or the Clerk may compel him to do his duty in the Ecclesiastical Court; and note that the Church is full against every body but the King, by the Institution, but not against the King till induction.

Hill. 45 Eliz.
C. B.
F. N. B. 74 H.
56. b.
26 H. 8. 3. per
Knightley.

Now note, that the six Months, within which the Patron is to present, are to be accounted by 182 days, and not by 28 days to the month.

Yelv. 100.
Co. 6. 61. b.
62. a.
Inst. 361.

And note, that the Clerk is to do many things more at the time of his Institution, and after his Induction, to secure himself in his Living, which he will find in the sixth Chapter following, to which I refer him, and wherein very great care is

*What's to be
done after In-
duction.*

From what
time the six
months shall
commence.

to be taken, that all things be duly performed and observed.

There hath been some Dispute, whether the six months shall commence from the time of the death of the last Incumbent, or other avoidance, or from such time as the Patron could reasonably have notice, considering the distance of place; and more particularly, where the Patron or Incumbent should happen to be beyond the Seas at the time of the avoidance.

Roll. 2. 363. q.

And there hath been a Canon, *quod tempus semestre non incipit versus patronos, nisi a tempore scientie mortis persone.*

quantis C. m. y. b. 10
remains void.

But by the Common Law of England, I conceive the Patron is bound to take notice of the Death, Creation or Cession, as aforesaid.

Regist. Orig.
42.

And this is proved by the Register, where in a prohibition 'tis said, *Quia secundum legem & consuetudinem Regni nostri Angliæ Episcopi, &c. beneficia vacantia per lapsum temporis ante sex menses vacationum eorundem transactos conferre non debent, nec conferre consueverunt, aliquibus*

What time the
Patron is to
present.

temporibus retroactis. So that it appears by this Writ, that the time of the six months to collate by lapse commences from the vacancy, and not from the notice: but this must be intended of such avoidances, whereof the Patron is bound to take notice as aforesaid.

Kelw. 50. b.
34 H. 7. 21. a.
14 H. 7. 21. a.
Dyer 227. p. 7.

And it is also to be observed, that if the Patron

Patron do present his Clerk, which is refused by the Ordinary, because he is illiterate, criminous, &c. there the Patron shall have no longer time to present but six months from the time of the avoidance, where the Patron is bound to take notice of it, and six months from the time of notice, where the Ordinary is bound to give notice of the Avoidance.

But note, that in all Cases, if a Church lapse to the Bishop or Archbishop, and the Patron present his Clerk before the Bishop or Archbishop have collated; the Bishop, &c. is bound to admit the Clerk of the true Patron, and cannot take advantage of the lapse. But the Canonists as should seem, hold the contrary, but the Common Law in this as in other things is to be preferr'd.

But if the Bishop collate, and the Patron present before Induction, he comes too late.

But the great question is, if the Church lapse to the King, and the Patron presents before the King take advantage of the lapse; Whether this shall avoid the Kings Title by Lapse? it is made a *Quere* by Dyer: but Hobart seems to be clear in it, that the King shall not have the benefit of the lapse; but divers * Authorities are against him, *Ideo quere. Rolls* 2. 368. b. 27 E. 3. 84. b. Co. 7. 28. Doct. and Stud. lib. 2. cap. 31.

*si un illitwante pson
ve soit present le
patron ne avoit
plus long temps a
presnter qm aux moys
a temps de la Vo. Patron*

The Patron
presents after
Lapse incur'd

13 E. 4. 3. b. c. Clerk present
11 H. 4. 80. a. Patron apres
Hob. 154. un laps mab
Hutton 24. de collation
32 E. 3. 1. Evesq, p'sent
11 H. 4. 80. est obligé a
43 E. 3. 11. p'sentation
Lindwood. admitter hie
Si aliquo evin- Cluse.
cente, &c.
verba injuria.

Dyer 277. p.
56.

*Quere. Lapse al Roy
& patron present deo?
le Roy p'ist advantage
de la lapse*

Dier 277. p. 55
Hob. 152.
Hut. 24.
* Cro. Eliz.
119.
Cro. Jac. 216.
Owen 3, & 5.

There

What time the Patron has to present.

Scence Regi-
am majestatem
10. b.
chap. Quoniam
verbum devol-
vatur.

Com. notice given
before a patron's
deprivation &c.

Doff. and
Stud. ubi supra.
Co. 6. 19. b.
Cro. El. 119.
Dyer 318. a.

Dyer 346. a.

Co. 6. 19. b.

Dyer 346. b.

Harp. 3, and 4

El.

Dyer 137.

P. 29. 155. p. 5.

St. 13. El. cap.

11.

There have been some Opinions amongst the Canonists, that a Lay-Patron should have but four months to present, but an Ecclesiastical person should have six months; and so it is said is the Law of Scotland, but the Common Law, which rules the point here, and with more reason, gives the Patrons in both Cases six months.

In the Cases of Deprivation and Resignation, where the Patron is to have notice before the Church can lapse, the Patron is not bound to take notice from any body but the Bishop himself, or other Ordinary; which must be given personally to the Patron, if he live in the same County; but if the Patron live in a foreign County, then the notice may be published in the Parish-Church, and affixed on the Church-door: And such notice must express in certain the Cause of the Deprivation, &c. and it must be *vere, proprie, personaliter, & non fide*. By the Ecclesiastical Laws. There are several other ways, that a Church may become void, of which the Patron is at his peril to take notice, as union, not payment of Tenth, &c.

But no lapse shall incur by any deprivation *ipso facto* by the Stat. of 13 Eliz. until six months after notice.

C H A P. III.

The Third Chapter shews, in what Case it is necessary that the Bishop have a Jure Patronatus, and how the same is to be proceeded in, and what is the effect and fruit of the same.

IF two Patrons present to one and the same Church by several Titles, the Church is become litigious; because the Bishop knows not which hath the very true and rightful Title to the same, and by Consequence knows not which Clerk to admit: And I take it, the Church is not less litigious, though they both present the same person: because when the Bishop admits him as the Clerk of the one, he puts the other out of possession, and consequently to his Action; and the Bishop becomes a Disturber, if he who is put out of possession prove to have the better Title.

In what cases a Church shall be said litigious.

Now the Bishop in this case to secure himself, ought to award a *Jure Patronatus* to inquire of the Right; which is merely an Inquest of Office in nature of a Writ *de proprietate probanda*, and does not at all bind the Title or Right of the Party.

where a Jure Patronatus is necessary, and how to be proceeded in.

† 34 H. 6. 38. b.

But it seems a question in our Books, whether

35 H. 6. 18. b. 19. a.

whether the Bishop is bound to sue the *Jure Patronatus* at his own cost and peril, or only at the Prayer, and at the cost of the Party that prays it, or of both parties? but the better opinion seems to be, and so is the practice, that the same is to be sued at the prayer, and at the cost of one of the parties that prays it, or of both the parties if they join.

34 H.6.11.a.
Hob.317.
34 H.6.38.
5 H.7. 12.a. it
is made a
Quere.

Now whereas the Church may become litigious by double or plural Presentations, so it may become more litigious by the *Jure Patronatus*; for if two Patrons present, and each of them prays a *Jure Patronatus* by himself (as they may) and the one Jury gives a Verdict for the one's Title, and the other for the others Title, here the Bishop receives no direction at all, but the Church still remains litigious.

Callis Read.3.
21 H.6.44.a.
Quere.

But here arises another great question, whether the Bishop in this Case may let the Church Lapse, and collate; or whether he be not bound to admit one of the Clerks at his Election, or at his peril. Mr. Serjeant Callis in his Reading, was of opinion, he might refuse both Clerks in this Case and suffer the Church to lapse: and so is the Book in 21 H. 6. by Newton and Paston. *tamen inde quere.*

41 H.6.45.a.

And as a Church may become litigious by a *Jure Patronatus*; so it may become litigious after a *Jure Patronatus*, and a Verdict given for one of the Parties; for

for if a *Jure Patronatus* be awarded, and a Verdict given for one of the Parties, and before the Patron presents, for whom the Verdict was given, and prays admittance of his Clerk (as he ought to do, before the Bishop is bound to admit his Clerk) another presents; here the Church is become litigious *de novo*, and the Bishop in this Case, as it seems, may award a new *Jure Patronatus* to determine the right of Patronage between the new and the old Patron, for whom the Title was found in the former.

But some have thought, that though ^{21 H.6.44.} the Church be not litigious by double or ^{Callis Read-} plural Presentations, yet the Bishop, if ^{ing. 29.} he doubt of the Patrons Title that presents, may award a *Jure Patronatus*, and inquire of such Patrons Title, and by that means prevent the surprise that may happen to other pretenders by sudden admission of the Clerk; and in case the right of Patronage be found for ^{Hob. 318.} a † stranger, the Bishop may admit his ^{† 34 H.6.44.} Clerk.

But it seems, that if the Bishop admit ^{Hob. 317..} the Clerk that is presented before the Church becomes litigious by a second Presentation, the Bishop acquits himself thereby from being a Disturber; but by this means the Bishop may do great wrong in surprising other Patrons that have right: And the Law doth not
so

so hasten the Bishops proceeding, but that, as has been said, he may take convenient time to examine the Clerk, that other pretenders may take notice of the vacancy.

Hob. 317. But though the Church by any of the means abovesaid be become litigious, yet I think there is no doubt, but that the Bishop may admit either Clerk without a *Jure Patronatus*, but then he doth it at a double peril; for if the Patron, whose Clerk he admits, have not a good Title, or having a good Title do not make it out in a *Quare impedit*, or other Action brought for the Church, the Bishop will be made a Disturber.

And the Bishop may thereby do great wrong to the true Patron, by putting him out of possession of his Church, and forcing him to an Action that may turn much to his charge and trouble, beside great damage to his Clerk, and oft to the losse of the Advowson; therefore Bishops ought in this Case to be very tender to proceed according to Justice. But if the Patron fear any foul play from the Bishop, and be not resolved of his Clerk, he may enter a Caveat with the Bishop, not to admit the Clerk of any other, and though this do not so bind up the Bishop that he cannot * admit the Clerk of another person; yet if the Bishop will presume to do it without a

Rolls 1. 361.
m. 3.
* contra Poph.
133.

Jure

Jure Patronatus; he may be punished by his Superior.

But in case the Bishop delay to admit the true Patrons Clerk, he may sue a *Duplex Querela* out of the Archepiscopate, to command the Bishop to admit his Clerk; and then, if the Bishop do not admit the Clerk within nine days, or the space assigned by the *Duplex Querela*, or return a legal cause why he does it not, the Metropolitan may admit the Clerk in the Ordinaries default.

If the Archbishop institute in the Bishop's default, and the Bishop appeal after induction, a prohibition lies.

But the Bishop may return, if the truth be so, that the Church is litigious, and that he cannot admit the Clerk till the right be determined in a *Jure Patronatus*, which will excuse him.

But the surest and safest way in this case is, if the Bishop delay the true Patron, immediately to sue a *Quare Impedit*, and thereupon a *Ne Admittas* to the Bishop; and then if the Bishop, after the receipt of such Writ, admit the Clerk of any other person without a Verdict in a *Jure Patronatus*, the true Patron may have a Writ called a *Quare Incumbavit*, against the Bishop, and may therein recover the Presentment with damages.

And it should seem this Writ lies, in case the Bishop admit the Clerk of the

adverse Patron, notwithstanding he hath obtained a Verdict in a *Jure Patronatus*: but this must be intended, I conceive, where such Patron is Defendant in the *Quare Impedit*.

Croke Jacobi
463.

Can. 95.

And note, that a Caveat entered in the life of the former Incumbent is of no force.

And note, that by a Canon made in the time of King James, the Patron or Clerk cannot have a *Duplex Quærela* till 28 days are expired from the time the Clerk was presented.

How far the
Bishop is bound
by a Verdict
in Jure Pa-
tron.

And it seems likewise, that the Bishop is not so bound by the verdict in a *Jure Patronatus*, but that he may admit the contrary Clerk, if he see cause, or be satisfied he has the better Title; but this seems to be against Justice and the true intent of the Law.

34 H. 6. 11. b.
Hob. 318.

And Sir Henry Fobars was of opinion, that an Action of the case lies against the Bishop by the Patron that is so disturbed, if in a *Quare impedit* he prove to have the better Title, and recover his damages by reason of the delay and trouble the Bishop hath thereby put the Patron to; but then the Bishop must not be made Defendant in the *Quare Impedit*: but of this *Quære*.

Quære.

The manner of
proceeding in a
Jure Patrona-
tus.

Now the manner and form of proceeding in a *Jure Patronatus* is thus: The Bishop issues forth a Commission under his Seal to his Chancellor, or some other persons,

persons, whom he pleases, that are expert in the Canon and Ecclesiastical Laws: in which Commission (since the Title of Patronages is determinable at the Common Law) it were not amiss to join some Common Lawyer of eminent Learning and Integrity; and these Commissioners are by him authorized to summon a *Jure Patronatus*, and to proceed to the Determination thereof, and then the Commissioner or Commissioners so authorized issue out a Mandate to some Officer of their own to summon a Jury, which must be one half Clerks, and the other half ^{12 H.6.29b.} Lay-men; and if they refuse, being duly summoned, to appear, the Commissioners may proceed against the Clergy-men by Sequestration, and the Lay-men by Ecclesiastical Censures to compel an appearance.

When a full Jury of Clergy-men and Laicks appear, which must be six of each at least, the Commissioners are to swear first a Clergy-man, and then a Lay-man, till twelve be sworn at least of the Jury: But the Commissioners may swear a greater number than twelve of the Jury, if they please, or see cause, so always that there be an equal number of Lay-men and Clergy-men sworn in the whole.

Callis Reading
29.

The points inquirable by this Commission are five:

The Points in-
quirable in a
Jure Patron.

1. *Si Ecclesia vacat, & quomodo vacavit?*

C 2

2. *Quis*

2. *Quis Patronus ultimo presentavit?*
3. *Quis est verus & indubitatus Patronus?*
4. *Quis presentare debet ad Ecclesiam nunc vacantem?*
5. *De Indonitate persone presentate.*

But the Civilians vary in their Articles at pleasure.

But the main and chief points are the third and fourth, the last resting wholly in the Judgment of the Bishop.

21 H. 6. 45. a.

After the Jury is sworn and charged, the Council and Advocates of both parties are to shew their respective Clients Titles, and produce their Evidences to to prove the same. And after the Evidence is given on both sides, and Council fully heard, the Jury may give their Verdicts forthwith, or the Commissioners may give them time to consider of their Evidence, and may assign them another time and place for the giving their Verdict, as in other Inquests of Office; but I like much better (to avoid being tampered with) that they give their Verdicts forthwith before they part, unless new Evidence be expected.

22 H. 6. 29. b.

The effect of a
Jure Patrona-
us.

The effect of this Suit is no more but for the Bishop's security, that he may avoid being a Disturber; for the Verdict of this Jury is a sufficient warrant for the Bishop to admit and institute his Clerk, for whose Title the verdict is given, and the

the Bishop for so doing shall never be made a Disturber, though the other Patron against whom the Verdict is given shall after recover in a *Quare Impedit* or other action.

But suppose the Jury will not agree of their Verdict, and the one half be for the one Patron, and the other half for the other Patron; or, that they refuse to give any Verdict at all; or if they find a special Verdict, as I suppose they may; the Bishop in all these cases is left to proceed at his peril, as though no *Jure Patronatus* had issued at all; or perhaps in this case he may discharge the Jury, and summon a new *Jure Patronatus*.

And it is to be observed, that after a Verdict found in a *jure patronatus* for the Patron, the Patron must again request the Bishop to admit his Clerk; otherwise, if the Church lapse after six months, the Bishop may Collate.

But if two Coparceners present several Clerks by the same Title, this doth not make the Church litigious, but the Bishop is bound to admit the Clerk of the elder sister: but this is to be intended where the eldest sister presents alone, and not jointly with any other of the Coheirs.

But if two Jointenants or Tentants in Common present several Clerks, that makes not the Church litigious; for the Bishop may admit the Clerk of which he

What's to be done, if the Jury will not give a Verdict.
35 H.6. 18.b. &c.

34 H.6. 17. a.
Callis Read. 29.
What's to be done, where Coparceners, Jointenants, or Tenants in Common, pre-

sent severally.
21 H.6. 45. a.
per Asch.
34 H.6. 40.
5 H.7. 8.
11 H.4. 58.
33 H. 6. 32.
1 Inst. 186.b.
Doct. & Stud.
115.b.

Kite vers Evesque
Eristow P.7. Jac.
C.B. 1 Inst.

6 E. 4. 10. b.

34 H. 6. 40. b.

ubi supra.

pleases: or if they do not agree and join in presenting a Clerk within the six months the Bishop may collate.

And note, that the Bishop needs not to make Commissioners to enquire *De jure patronatus*; but he may, if he pleases, do the same himself: and therefore, if his

If the commissioners neglect their duties.

22 H. 6. 30. a.

Commissioners neglect to do their duties, it shall not excuse him, because it was his folly to name such Commissioners. But the opinion of the Civilians seems otherwise: for they say, that the party shall name the Commissioners; and if they neglect their duties, it shall be at the peradventure of the party that names them. And though they make a false return, or no return at all, it shall excuse the Bishop; and the party grieved is left to his action against the Commissioners.

Verdict does not bind.

21 H. 6. 45. a.

34 H. 6. 38. b.

And, as has been said, the Verdict in a *Jure Patronatus* does not bind the adverse party's Title, though it may be some evidence for him whose Title is found to be the best.

C H A P.

C H A P. IV.

Shews how the Law stood concerning Pluralities before the Statute of 21 H.8.cap. 13. Who are qualified within that Law to have Pluralities; and how qualified persons ought to behave themselves in taking the second Livings, so that the former may not be void.

A Plurality is, where one and the same person obtains two or more Spiritual preferments with cure of Souls or without: against which there have been several Canons, and they have been alwaies discountenanced at the Common Law, and several Complaints have been made against them in Parliament; yet the Pope held them up by his Dispensations. How agreeable these Dispensations were to God's service; nay, how prejudicial they have been to the advance of the Christian Religion, and are, I leave others to judge; it being no part of my undertaking. And though I find a great Judge of this Nation defending of them, yet I find a Canon in the general Council of Lateran against them, in the Year 1215. in these words, *Statutum est*

What a Plurality is.

Co.4.90.b.
Co.mag.ch.
626. Vide
the Records
there cited.

Hob.149.
Concil. rom.
4.221. cap. 29.
Concil. Lat. 4.
1215.ca.29.
Concil.Lat.3.
1180.ca.13.

Canon against
Pluralities.

quod, quicumque receperit aliquod benefici-
um habens curam animarum annexam, si
prius tale beneficium obtinebat, eo sit jure
ipso privatus, & si forte illud retinere con-
tenderis, alio etiam spoliatur, Is quoque, ad
quem prioris spectat donatio, illud post re-
ceptionem alterius conferat cui merito vi-
deris conferendum.

* Can. 9.

Note, Those

Living are

said to be in-

compatible that

have cure of

Souls, or are for-

bid to be hold

together by

some Canon.

Tom. 1. 368.

cap. 64.

The effect of

Plural.

Co. 4. 79. b.

And by the same Council it is further
decreed, that *Dispensationes autem ad
plura * incompatibilia ultra duo, nisi qua-
lificatis juxta formam juris communis non
concedantur, nisi ex magna & urgente
causa.*

And now let me tell you the fruits of
Pluralities out of another Council, which
is delivered in these words. *Res ipsa lo-
quitur, plura beneficia, potissimum quibus
cura animarum submissa est, non sine gravi
Ecclesiarum damno ab uno obtineri; cum
unus in pluribus Ecclesiis rite officia per-
solvere, aut rebus earum necessariam cu-
ram impendere, nequeat.*

Yet notwithstanding the Canonists al-
low of Pluralities in six cases: 1. When
the Churches are so poor, that either by
it self will not maintain a Minister
2. In such cases as the Bishop dispenses
with them. 3. Where there is a scarcity
of Clerks. 4. Where the Clerk has one
by Title, and the other by *Commendam*.
5. By Grant from the Pope. 6. Where
two Churches are united, or depend the
one

one upon another. Which Hostiens. renders thus:

*Ecclesias plures nullus de jure tenebit.
Dependens, tenuis, rarus, vel gratia Papæ.
Utilitas urgens, & commendatio justa.*

But, as I take it, the Council of Lateran reduces all these qualifications to the Pope's dispensation. The Canon is as followes:

Cum fuit in hoc Concilio prohibitum ut nullus diversas dignitates Ecclesiasticas, & plures Ecclesias parochiales reciperet contra sacrorum Canonum instituta. Hoc idem in personalibus decernimus observandum, addentes, ut in eadem Ecclesia nullus plures dignitates habere præsumat, aut personatus, etiamsi curam non habeant animarum. Circa sublimes tamen & literatas personas, quæ majoribus sunt beneficiis honoranda (cum ratio postulaverit) per sedem Apostolicam poterit dispensari, &c.

And upon this Canon, Goodman, Dean of Wells was deprived of his Deanery, because he had accepted the Prebend of Wiveliscombe in the same Church, in the time of E. 6. And note, these presentments were not within the Statute of Pluralities, but are left as they were upon the Canon Law; for the Statute only extends to Livings with cure of Souls.

Concil. Lateran. sub Alex. 4. 1180.

Can. 19.

Dyer 273. p. 35.

} n. b.

Concil. Tri-
dent. 496.

N. B.

I might enlarge much more upon this Subject; but it being collateral to what I design, this tast shall serve. And if any body desire further satisfaction upon this Subject, I commend him to the History of the Council of Trent; where he will find, that by the greater and better opinion of that Council, Residence by him that hath a preferment in the Church with cure of Souls is of Divine right; and that therefore the Pope had no power to dispence with non-Residence, the consequence of which is, that it is against Divine right for any to take more Benefices than one with cure of Souls, because the same person cannot be resident in two places at one and the same time, to discharge his duty; which requires a constant attendance.

More 119.

But as the Pope by stratagem made the endeavours of all the good men in that Council ineffectual, so by his frequent Dispensations to take Pluralities without number or measure. He made the Canons of the Church of no other effect than to increase his own Revenue by Dispensations.

Acceptance of
a second Li-
ving makes the
first void.

And it should seem the Council of Lateran was received and approved (as to that point) in this Kingdom, and the Law was alwaies taken, that he that had one Living with cure of Souls, and without dispensation accepted another with cure

cure of Souls, made the first void: So that the Patron of the first Church might present a new Clerk, and needed not to stay till the former Clerk should be legally deprived. But in this case the Church doth not lapse till the end of six Months, to be accounted from the time the Patron hath legal notice of the vacancy from the Bishop; but after induction the Patron, as it should seem, is bound to take notice at his peril: And as to all others but the Patron, the Church remained full till induction into the second Living; and so are all the Books, that seem *prima facie* to differ, reconciled.

But the Parliament of *England*, that in all ages made bold with his Holiness, and to restrain the exorbitances of the Pope and Court of *Rome* (as the Reader may see, if he pleases to satisfy himself by the several Acts of Parliament mentioned in the margin against Provisions suing at *Rome*, impeaching judgments given at the Common Law, Aliens being beneficed within this Realm, priviledging religious orders from payment of Tithes, and many other things; and I cannot forbear to observe to the Reader the boldness of the Parliament in the sixth year of *H. 4.* with his Holiness, where they restrain the giving of exorbitant and unjust fees for the investitures of Bishops. The act begins thus: *Whereas there is a*
damna-

24 E.3.29.b.1

25 E.3.49.a.1

55. b.1

11 H.4.60.a.1

per Hill.

14 H.8.17. a.1

Co.4.95.b.

44 E.3.22.a.1

9 E.3.22.a.1

10 E.3. 1.

14 H.7.28.b.

14 H.8.47.a.1

F.N.B. 34.L.

15 E.3.9.

11 H.4.37.

Cro. Car. 357.

Several acts to

restrain the

Pope.

27 E.3. cap. 1.

3 R. 2. cap. 3.

7 R.2. cap. 12.

2 H. 4. cap. 4.

38 E.3. cap. 1.

16 R.2. cap. 5.

6 H. 4. cap. 1.

25 E. 3. of

Provisions;

and 27 E.3.

cap. 1.

6 H. 4. cap. 1.

n. b.

damnable custome in the Court of Rome to take more for the investiture of Bishops, &c. Certainly these brave Parliamenteers never expected his Holiness's Indulgence or Pardon, this seeming a sin as high as that against the Holy Ghost to charge their Holy Father with a damnable custome in his Court, to use Extortion and Simony.

Can. 8.

* Nota.

And the Council of Lateran dealt almost as plainly with his Holiness, speaking of *Simony*; that Council has it, *Uenefaria Simonie labe & pestis non solum a Romana Curia, sed etiam ab omni Christiana ditione, in perpetuum dejiciatur, constitutiones per antecessores nostros etiam in sacris Conciliis nostris Editas contra hujusmodi Simoniacos, innovamus: easque inviolabiliter observari precipimus.*

The Act against Pluralities.

21 H. 8. c. 13.

Co. 4. 79. b.

This is a confirmation of the Canon, where the Living is above 8. l. per annum, but does not annul the Canon Law in other Cases;

so that the effect of this Law is, that it takes away Dispensations in this case, but leaves the smaller Livings, as they were before.

But to return. I say the Parliament, to prevent the mischiefs of these Dispensations, made a Law in the twenty first year of H. 8. That if any Person or Persons, having (that is, being instituted) one Benefice with cure of Souls, being of the yearly value of eightpounds or above, shall accept and take any other with cure of Souls, and be instituted and inducted into the possession of the same, that then, imme-

diately

diately after such possession had thereof, the first Benefice should be void.

And that it should be lawful to every Patron having the advowson thereof to present another, and the Presentee to have the benefit of the same, as though the Incumbent had died or resigned, and that any licence, union, or other Dispensation contrary to that Act should be void.

If this Act had gone no further, it had been an excellent Law: But there are so many qualifications in this Law that wholly defeat the benefit of it; since the Nobility are grown so numerous as they are at this day; so that the grievance is now become as great as ever, if not greater, and deserves a new and stricter reformation; for almost all the greatest and best Livings of the Kingdom are now held by Pluralists, and served by mean Curates.

But now let me return to the Act, and let me observe:

That this Act has only provided a Remedy where the first Living is of the yearly value of Eight pounds or above, which must be understood according to the valuation taken in the twenty ninth year of King E. 1. till the twenty sixth of H. 8. And after that time, according to the valuation then returned into the Exchequer, and now made use of in the First-fruits office. * But many former Opinions and Books have been, that the valuation P. 29.

Cro. 6. ca. 45.
P. 19. Jac. C. B.
Evesque Durham vers Evesque Peterborough.
Roy vers Evesque Br. & Handley T.
44 El. B. R.
ro. 564.
the Court was divided.
* Dyer 137.

Cro. Eli. 853.

Quere.

Bushy vers.

Smith. T.

40 Eli. r. 123.

Noy. 38.

valuation ought to be according to the true value. *Ideo Quere.* This point was moved in *Shute and Higdons case*, Vaughan 130. but was not settled, so it remains a *Quere* still.

But in case the first Living be under the yearly value of Eight pounds, or a *fine cura*, then the party may accept a second, as he might have done before this Act; with a Dispensation, which he needs not now to go to Rome for, although he be not qualified within this Law.

But I conceive, if an Incumbent of a Living under the value take a second Living without a Dispensation, that the first Living is void by the Canon Law, though it be not so by the Statute.

who are qualified to have Pluralities.

But by this Act there are several persons qualified to have and retain Pluralities; and those are of three sorts: 1. By Service, 2. by their Birth, and the 3. by Dignities. And first of those that are qualified by Service.

Qualifications.

1. All the Kings Chaplains (which are not of his Council) and of the Queen, Prince, Princes, and Brethren and Sisters, Uncles and Aunts of the King.

2. Eight Chaplains of every Archbishop.

3. Six Chaplains of every Duke.

4. Five Chaplains of every Marquis and Earl.

5. Six Chaplains of every Bishop.

6. Four

6. Four Chaplains of every Viscount.
7. Three Chaplains of the Lord Chancellor, and of every Knight of the Garter and Baron.

8. Two Chaplains of every Dutchesse, Marchioness, Countess and Baroness, being Widows.

9. Two Chaplains of the Treasurer and Controller of the King's House; the King's Secretary, the King's Almoner, Clerk of the Closet, and Master of the Rolls.

10. One Chaplain of the Chief Justice of the King's Bench, and Warden of the Cinque Ports for the time being.

All these in respect of their Services may purchase Licence or Dispensations, and take, receive and keep two Parsonages or Benefices with cure of Souls, notwithstanding this Act.

But those of the King's Chaplains, that are sworn of the King's Council, may purchase Licence or Dispensations, and take, receive and keep three Parsonages, or, &c. with cure of Souls.

n. b.

2. The second qualification is by Birth; *Qualification by birth.* that is, the Brothers and Sons of all Temporal Lords and of Knights, born in Wedlock, may purchase License or Dispensations, and take, receive and keep two Parsonages, &c. with cure of Souls; in which qualification it is to be observed, that no provision is made for Bastards,
nor

nor for the Sons of Bishops, Abbots, Priors, &c. and note, in this case the Sons and Brothers of Knights have greater privilege, than the Sons and Brothers of Baronets.

*Qualification
by dignity.*

n. b.

3. The third qualification is of certain persons dignified in the Universities; and of that sort are all Doctors and Bachelors of Divinity, Doctors and Bachelors of the Canon Laws, which shall be admitted to any of those degrees by any of the Universities of this Realm, and not by grace only; all which may purchase Licenses or Dispensations, and take, receive, and keep two Parsonages, &c. with cure of Souls.

*Proviso, that
above the num-
ber shall not be
advanced.*

And in this Act there is a negative Proviso to this effect, That no person or persons to whom any number of Chaplains, or any Chaplain by the provisions aforesaid is limited, shall in any wise by colour of the same provisions, advance any Spiritual person or persons above the number to them appointed, to receive or keep any more Benefices with cure of Souls, than is above limited.

*Proviso, that
they must have
Testimonials.*

There is another Proviso, that the Chaplains so purchasing, taking, receiving and keeping Benefices with cure of Souls, as aforesaid, shall be bound to have and exhibit, where need shall be, Letters under the sign and Seal of the King, or other their Lord or Master, testifying whose Chap-

Chaplains they be, or else not to enjoy any plurality of Benefices by being such Chaplains. Upon this clause some question has been made, whether a Chaplain can be retained within the meaning of this Law by parol; and it seems he may, so that they have such Testimonial, when they pray their dispensation; but the safest way is to have it in writing, and it must be under Hand and Seal.

Now having shewed what persons are qualified within this Statute, I will in the next place shew how the Clerk, that would have the benefit of his qualification within this Law, ought to proceed in the taking a second Living, so that the first may not be void, which is in this manner:

The Parson that falls within any of the qualifications within this Law which makes him capable of a plurality, and having obtained a presentation to a second Living, must carry his Testimonial or Retainer under the Hand and Seal of his Lord or Master to the Master of the Faculties, who is to make out his Dispensation or Licence to accept the second Benefice, which being obtained, he must next have it confirmed under the great Seal of England: and after he has thus obtained his Dispensation, and has it confirmed under the great Seal, then, and not before, he is to apply himself to the Bishop of cap. 21.

D

the

Roy vers.
Saveacre. T.
28 El.C.B.ro.
1130. Hughes
p. 41.

Roy vers. E-
velque Lin-
coln. & alios
T. 31 El. ro.
725. C.B.

How to proceed
in the taking of
a second Li-
ving.

Stat. 23 H. 8;
of cap. 21.

*First Living
void by institu-
tion into the Se-
cond.*

Co. 4. 79. b.
Hob. 166. *

*Which Chap-
lains shall be
qualified,
where above
the number is
retained.*

More 361.
Co. 4. 90. 3. *
& 118. a. R.
vers. Evel ue
Glouc. & Sa-
veacre. An-
decison 100.

the Diocese where the Living lies for his admission and institution: But these things taking some time in the doing, I advise the Clerk immediately to enter a Caveat with the Bishop and his Vicar general, and carry his presentation to the Bishop and acquaint him with it, and with the reason of his delay, lest he should be surprized. Though by the Letter of the Act the first Living is not void until induction into the second Living, the words whereof are as follows (*if the party be instituted and inducted in possession of the second Living that then the first shall be void.*) Yet to avoid the great inconvenience that otherwise would ensue, it has been held that the first Living is void upon the bare institution into the second Living, and so it should seem the Law was before the making of this Act, where the party had no dispensation.

And it is to be observed upon this Law, that in case any Lord or other Person, whose Chaplains are qualified within this Law to have two or more Livings incompatible, do retain his full number of Chaplains, and after one or more above his number, that in that case the Supernumerary Chaplains, that were retained after such Lord or other Person had retained his full number allowed by the Statute, are not qualified by this Law to have pluralities of Livings, although the super-

Supernumerary Chaplains be preferred before the other that were first retained: but if a Chaplain qualified within this Law be legally inducted into a second Living with a dispensation as he ought, *Dyer 312. p.* although his Master be attainted, degraded, or removed from his office, yet he shall retain his Plurality during his life.

But if one be retained Chaplain to any *The Master* Lord or other Person, whose Chaplains *dies, &c. be* are qualified within this Law, and his *fore preferment.* Master dies, is attaint, degraded or dis- *Co. 4. 117. b.* plac'd before his Chaplain be preferred to a second Living; or if such Lord or other Person discharge such a Chaplain; (as he may) in all these cases the Chaplain loses his qualification to have plurality of Livings incompatible.

But if a Dutches, Marchioness, Countess or Baroness do retain a Chaplain, and *The Mrs. m. r.* after marries, this shall not take away the *ries.* qualification of such a Chaplain, but that * *That is, ba-* he may have plurality of Livings * *ving cure of* incompatible within this Law, as he might *Souls.* have done before.

And if such Dutches, &c. retains *Co. 4. 119. a.* Chaplains, and after marries, and after becomes a Widow again; yet the first retainer stands good, and was not Countermanded by the Marriage, or death of the Husband.

And note that there is a *Proviso* in this Act, that though a Dutches, Marchioness, D 2 Countess,

Countess, or Baroness, do marry an Husband under the degree of a Noble Man or Baron, that yet nevertheless she may retain two Chaplains which shall be qualified within this Law.

What preferments are not within this Law.

n. b.

And it is declared by this Act, that Deanries, Arch-Deaconries, Chancellorships, Treasurerships, Chauncerships or Prebendaries in any Cathedral or Collegiate Church, or any Parsonage that hath a Vicar endowed, or any Benefice perpetually impropriated, are not to be esteemed Benefices with cure of Souls within this Act.

Co. 4. 118. a.

And if any Duke, Lord, or other person, whose Chaplains are qualified within this Law, shall have a double capacity to qualify his Chaplains; as if a Duke, &c. be made Lord Warden of the Cinque Ports, or a Baron; Master of the Rolls, Knight of the Garter; &c. In all these cases such Duke, Baron, &c. can but qualify his number of Chaplains, according to his best qualification only.

Chapl. retained in the life of the Father. Co. 4. 9. a.

And if the eldest Son of a Duke, Marquess, &c. retain Chaplains in the life time of his Father, who after dies, and the honour descends upon such Son; yet this retainer will not qualify his Chaplains to have pluralities within this Statute, because at the time of the retainer he was not capable to qualify them. *Ex quod ab initio non valet, tractu temporis non convalescit.* If

If a Duke, Marquess, &c. retain his full number of Chaplains which are advanced, and then discharge them; yet he cannot during their Lives qualifie any other within this Statute.

Lord discharged Chaplains after they are preferred.

Co. 4. 90. a.

But if a Duke, Marquess, &c. that has power within this Act to qualifie Chaplains, at one instant of time retain his double number of Chaplains, or any supernumerary Chaplains; in that case, those only shall have the benefit of qualification that are first preferred. *Quia in equali jure melius est conditio possidentis.*

A greater number of Chaplains retained together.

Co. 4. 90. a.

Dier 311. p. 88.

If one that is qualified within this Statute take a second Living incompatible, and be instituted for inducted into the same before he have obtained a Dispensation, the first is void; though Dyer makes a *quere* of it.

Co. 4. 79. b.

Dyer 312. p. 88.

And note that it hath been resolved, that the King himself cannot dispense with this Law.

This Law is not dispensable.

But if one that is qualified within this Law to have two Livings incompatible, shall neglect at the time of his Institution to subscribe to the 39 Articles of Religion, though he be after inducted into the second Living, yet this shall not make the first void; for his Institution, and Induction, were both void *ab initio*; but if such person had subscribed the Articles, at the time of his Institution,

A pluralist neglects to subscribe or read the 39 Articles.

Dyer 377. b.

Co. 5. 02. b.

Hob. 157.

and had after neglected to read them within two months after his induction into the second Living, this makes both Livings void (as was lately adjudged) because for two months he was compleat Parson of the second Living.

Vaughan 129,
&c.

Hob. 157.

And if a Parson, &c. that is qualified within this Statute to have plurality of Livings incompatible, be made a Bishop, his qualification ceases, so that after he cannot take two Benefices incompatible by force of such qualification; but if he had two Livings before he was made Bishop by qualification and dispensation within this Statute, he may retain them by *Commendam*; and although he were the King's Chaplain, it alters not the case; for by the acceptance of a Bishoprick he ceases to be the King's Chaplain within this Law.

Parsons Law
l. 2. 14 & 15.
uniting a Li-
ving is a plura-
lity.

And if a Parson have one Living incompatible, he cannot obtain another with Cure to be united, unless he be qualified and have a Dispensation; but that the first will be void.

Parson and
Vic. of the
same Church,
St, &c.

Mr. *Hughes* in his Parsons Law puts two Cases, which he is of opinion are out of the dangers of this Law. The first is, where there is a Parsonage and Vicarage endowed, and the Parson without Dispensation or Qualification accepts the Vicarage: and he conceives, that notwithstanding that these are two seve-

ral

ral Advowsons and Benefices, and that several *Quare Impeditis* may be brought of them, and that several actions are maintainable by the Parson and Vicar concerning their possessions; that yet nevertheless the presenting of one person to both is no Plurality within this Statute or the Canon: because the Parson and Vicar have both but one Cure of Souls; besides there is a *Proviso* in the Act, that no Parsonage with a Vicarage endowed shall be accounted a Benefice with cure of Souls within that Act.

But his other Case seems more doubtful, and it is put where a Church has two Rectories, and each has cure of Souls *per se*, and are incompatible, and one person obtains both these Livings without qualification or dispensation. This Case he conceives to be both out of the danger of this Act and the Canon. 1. Because it is not in *pluribus Ecclesiis*. 2. When there are several Advowsons in one Church, neither Parson hath the whole cure of Souls, and the words of the Statute are, *having one Benefice with cure of Souls of the value of eight pounds takes and accepts another benefice with cure of Souls, &c.* But here the Church is one and the same, and the cure of Souls the same; and therefore as he conceives neither within the danger of the Statute or Canon: but in a private report that I have, this very

Cooper vers.
Beauchamp e.
P. 37 Ll. C.B.

point came in question in the latter end of the Queens time, and the Reporter says, that *Walmesly* and *Beaumont* were of opinion, that this Case was within the Stat. but *Anderson* doubted, and seemed to incline to the contrary. *Idem quare inde.*

There is now a 1000 qualifications at least in England by Service, besides the Chaplains of the King, Queen, Princes of the blood, and Dowagers, and probably as many more by birth and dignities; and there are about 4300. Livings in England of 10 pound per annum in the Kings books, and upwards, and it is not the least Livings the Pluralists catch at, though at first they crept into the Church, where Livings were so small they were not able to maintain a Minister, and if the 41 Canon of King James were observed, many mischiefs in this Case might be prevented.

* Co. 2. Inst. 627.

By the Resolutions of the several Cases before mentioned it is worth observation, how the Judges of the Common Law have endeavoured to advance this Law, and restrain the qualifications: And yet when all is done this Law produces little more effect, than the transferring the power of Dispensations in this case from the Pope, and scattering it amongst the Nobility and others; and how many Pluralists are there in England, that hardly see either of their Livings in a year? so that generally the best Livings in the Kingdom are served with poor Curates, and no hospitality kept: A thing worth the Consideration of a Parliament.

And it is to be hoped that our Noble Lords, when they consider the great damage the Church suffers by Pluralities, the many poor Souls that are neglected in

in danger to perish, the great discouragement it is to Learned men, when they see many of meaner worth enjoy two Livings apiece, besides Prebends, Deaneries, *Sine Cura's*, &c. and the abler and better man, for want of Friends is never able to rise higher than a poor Curacy of twenty or thirty pounds a year, when they consider how great a scandal it is to our Church, and it is to be feared, attended with a Curse; I say, it is to be hoped their Lordships will become so much Self-deniers, as to lay down this Privilege where they received it; certainly a blessing and the prayers of the poor Clergy would attend it, and if advantage should be reckoned in the case, I know none their Lordships enjoy by it; for I am bound to say that for their Lordships honour, that I do not know a Lord within the compass of my knowledge, that keeps a beneficed Clerk for his Domestick Chaplain, but have Chaplains of their own, and allow them honourable Stipends, and preferments in due time; but if their Lordships should not be willing to lay aside this privilege, the Archbishops that have the power of Dispensation, might remedy it in part, or in all; or his Sacred Majesty in denying Confirmation. God grant all may be done for the good of the Church!

The Lord Chancellor Elsmere at the Conference at Hampton-court, affirmed he never gave any of the Kings Livings to Pluralists a worthy president Fullers Ecclesiast. Hist. lib. 10. p. 16.

N. B. This last section concludes with a serious reflection and pious wish.

C H A P. V.

The fifth Chapter shews what Simony is, and who shall be said to be guilty of it, and what are the dangers ensuing thereupon.

HAVING shewed my Clerk how to obtain a Benefice, and likewise those which are qualified how to take a second Living; It rests that I should shew them what is to be done after Induction to confirm them in their benefices: But because Simony is not only scandalous to the Clerk that is guilty of it, but also very dangerous; and I told my Clerk in the second Chapter, that he must obtain his Presentation without any corrupt or Simoniackal Contract; I thought it fit by the way to let my Clerk know not only

what Simony is.

Panormit. c.

Nemo extra co,

&c.

Tho. Aq. 20. 2a

q. 100. Art. 1.

Cro. El. 789.

Tho. Aq. ibid.

Art. 4.

what Simony is, but likewise the danger that attends it. Simony by the Canonists and School-men is defined to be, *Studiosa voluntas emendi vel vendendi aliquid spirituale aut spirituali annexum opere subsecuto.* And Thomas Aquinas says, *Quod Simonia dici videtur a Simone Maggo, qui donum Spiritus sancti emere voluit, ut ex venditione Signorum quæ per eum fierent multiplicatam pecuniam lucraretur; & sic illi qui spiritualia vendunt, con-*

formantur

formantur Simoni Magor in intentione, in
actum vere illi qui emere volunt: Illi autem
qui vendunt in actum imitantur Giezi disci-
pulum Helifai, de quo legitur 4 Reg. c. 5.
quod accepit pecuniam a leproso mundatus,
unde venditores Spiritualium possunt dici,
non solum Simoniaci, sed etiam Gieziæ.

And St Gregory says, Quicumque sacer or-
dines vendant aut emunt, Sacerdotes esse
non possunt, ut scriptum est. *Anathema* In registr.
hab. l. q. 12.
Canon, Qui.

danti, *Anathema* accipienti, hæc est Simo-
niaca heresis: Quomodo ergo, si *Anathema*
tisati sunt, & sancti non sunt, sanctificare
alios possunt? Et cum in Christi corpore
non sunt, quomodo Christi corpus tradere vel
accipere possunt? qui maledictus, benedicere
quomodo potest. And the same Holy Fa-

ther farther says, Si Presbyter per pecuni-
am Ecclesiam obtinuerit, non solum Ecclesia
privetur, sed etiam Sacerdotis honore spoli-
etur. And it appears clearly, that the very
intention to buy Spiritual gifts or prefer-
ments carries with it the guilt of Simony
as well as the act it self; And therefore

the Holy Apostle said to Simon Magus,
Car enim tuum non est rectum coram Deo;
penitentiam itaque age ab hac nequitia
tua; & roga Deum si forte remittatur tibi
hæc cogitatio cordis tui: But this is in foro
conscientie only, and not punishable by
any Humane Laws, unless it proceed to
the Act.

Simony by the Canonist is distinguished
into

*In registr.
hab. l. q. 12.
Canon, Qui.*

*Ibid. Canon
Presbyter.*

*It hath been
held that a Pa-
tron that pre-
sents by Simo-
ny should lose
his Patronage
for ever.*

*Hoorden H. 2.
p. 310. Speed
305. 2.*

*Act. Apost. c. 8.
v. 21, &c.*

Division.

Canons against
Simony.

into *Simoniae* & *Simoniacum*: The first is where the Clerk comes in by Simony; whereunto he is not party or privy: *Simoniacum* is he which obtains a spiritual preferment by a corrupt and Simoniack Contract, to which he is party or privy, and consenting.

Against this Corruption in the Church many Canons have been made, amongst which I shall instance only two, and those provincial ones of our own Nation. The first was made in the year of our Lord 1229. in the time of *Richard Wetherhead* Archbishop of *Canterbury*, and is as follows.

Lindwood c.

Nulli liceat

Ecclesiam, &c.

Nulli liceat Ecclesiam nomine dotationis ad aliquem transferre, vel pro presentatione alicujus persone pecuniam vel aliquid aliud emolumentum pacto interveniente recipere: quod si quis fecerit, & in jure convictus vel confessus fuerit, ipsum tam Regis quam nostra freti auctoritate patronatu ejusdem Ecclesie in perpetuum privari statuimus: but it was not sufficient by a Canon to deprive a man of his Freehold or inheritance, be the word in *perpetuum* taken for life, or for ever, as it imports; neither was this Canon ever put in execution or attempted so to be, that I find.

The other Canon I made mention of, I find amongst the Canons of *Othobonus*, the Popes Legate here in *England*, which is to this effect.

Quia

Quia plerumque evenire didicimus, quod, cum ad vacantem Ecclesiam fuit presentatio facienda, is qui presentandus est prius cum patrono de certa Summa de bonis Ecclesie sibi annuatim solvenda paciscitur, & sic pactus ad Ecclesiam presentatur. h. Nos huic aduvsam Simonie vitium quam Ecclesie dispendium ingerenti occurrere intendentes, universas promissiones & pactiones huiusmodi penitus revocamus, & eas impofterum fieri districtius inhibemus: Et si facti fuerint, vires aliquas decernimus non habere.

But this Canon was of as little effect as the other, as to the making the Contracts void, which were only determinable at the Common Law, where this Canon could not be pleaded in Bar. I have mentioned these two Canons not for the validity or use so much, as to satisfy the Reader, what Provincial Canons we have against Simony, and to how little effect they were before the Statute of 31 Eliz. But there were some general Canons of the Church of greater force, whereby *Simoniace* is punished by Deprivation, and *Simoniacus* by Deprivation and perpetual disability *, not only as to the Church he was presented to upon a Simoniacal Contract, but also to all others: and being *malum in se*, it is not dispensable either by the King or any other.

And

Cap. Quintus plerumque.

Cro. El. 788,
789.

Per waybutton.

* Per Bullant

Sixtinam pri-

vatur ipso fa-

cto de omnibus
diuinitatibus

beneficial off

beneficis, officiis et efficientibus

inhabilis ad

omnia.

3 Inst. 154.

31111-24

Tho. Aqu. 22.

22. q. 100. Art.

1 Sect. 2.

St. Aug. de

hæresibus in

principio.

St. Greg. in

Reg. hab. 1. q.

1. & c. d. 1.

Stat. 31 Eliz.

cap. 6.

Stat. Against

Simony.

* Relates to
Patrons.

† This is to Bi-
shops.

|| Donatives.

* Bishops.

Penalty.

And it has been held by some of the Fathers to be a Heresie, if not the Sin against the Holy Ghost: but neither the greatness of the sin, nor the severity of the Canons were sufficient to restrain this evil in the Church, till the Parliament of England took it into their Care, and in the 31 Eliz. it was enacted.

That if any person or persons for any Sum of money, reward, gift, profit or benefit directly or indirectly, or for or by reason of any promise, agreement, grant, bond, Covenant, or other assurance for any sum of Money, reward, gift, profit, or benefit, whatsoever directly or indirectly shall * present, or † collate any person to any Benefice with Cure of Souls, Dignity, Prebend, or Living Ecclesiastical, &c. or give or bestow the same for or in respect of any such corrupt cause or consideration, that then every such Presentation, Collation, gift, and bestowing, and every admission, * investiture and induction thereupon shall be utterly void, &c.

And that the Queen, her Heirs and Successors to present, collate, &c. for the one Turn only.

And that every Parson, &c. that shall give or take any such Sum of Money, &c. or that shall take or make any such Promise, &c. shall forfeit and lose the double value of one years profits of every such Benefice. And the person so corruptly taking any such Benefice shall thereupon and from thenceforth

Forth be adjudged a disabled person in Law
to have and enjoy the same Benefice, &c.

2. And further, that if any Person
shall for any sum of money, reward, &c. (or
supra) directly or indirectly (either than
for small and lawful fees) or for or by
reason of any promise, &c. admit, institute,
install, induct, invest, or place any Person
in or to any Benefice with cure, &c. That
then every Person so offending shall forfeit
and lose the double value of one years
profit of such Benefice, &c. and that the
said Benefice, &c. shall be as soon void, &c.
And that the Patron, or person to whom
the advowson, &c. shall and may by virtue
of this Act, present or collate, &c. as if
the person were naturally dead; but no
lapse hereby to incur till six Months after
notice.

3. And if any Incumbent of any Bene-
fice with cure of Souls do or shall corruptly
resign or exchange the same; or corruptly
take for or in respect of the resigning or ex-
changing of the same, directly or indirectly,
any pension, sum of Money, or benefit what-
soever; that then the giver and taker of
any such sum, &c. corruptly shall lose
double the value of the sum so given,
taken, or had; the one half to the Queen,
&c. and the other moiety to him that will
sue for the same, &c. in any of her Ma-
jesty's Courts of Record, in which no Es-
soin, &c.

Ecclesiastical Censures saved. strain any censures Ecclesiastical, &c. And further it is provided, that if any person shall receive, or take any Money, Fee, Reward, or any other profit directly or indirectly; or shall take any promise, agreement, Covenant, Bond, or other assurance, to receive or have any Money, Fee, &c. directly or indirectly, to him or themselves, or any of their, &c. Friends (all lawful and ordinary Fees excepted) for or to procure the ordaining, or making of any Minister, &c. giving any Order and Licence to preach, shall lose forty pounds; and the Minister so made, ten pounds. And that if such Minister within seven years next after such corrupt entering into the Ministry, &c. shall accept or take any Benefice, Living, or promotion Ecclesiastical, the same Living, after Induction, &c. to be void. And that the Patron may present, &c. as if the party so inducted were naturally dead; the one half of the said forfeiture to be to the Queen, &c. and the other half to the Informer, be recovered (as is supra.)

canons against Law.

And I do not observe that the corrupt Patrons were in danger to suffer by any Law or Canon before this Law was made. For, as I said before, his right could not be taken away by a mere Canon not confirmed by Parliament and before this Law was made the Incumbent

that

that came in by Simony held the Living which he obtained by Simony until he was legally and judicially deprived by Sentence Ecclesiastical, wherein he often escaped for want of such proof as the Spiritual Laws required; but this Statute strikes at the root, and makes as well the presentation, as the admission, institution and induction void: So that if this Statute had not given the presentation to the Queen, the true Patron might have presented a new Clerk; or in his default the Church would have lapsed. But by this Act the corrupt Patron does not only lose the presentation to the King *pro hac vice*; but also two years value of the Church, not according to the valuation in the King's Books in the First-fruit Office; but according to the true and utmost value of the Church.

3 Inst. 154^s

But if one that has no right to present shall by means of a corrupt and Simoniackal agreement present a Clerk, who is by his presentation admitted, instituted and inducted into a Church; yet this shall not entitle the King to present: for though the Act of Parliament makes all void; yet an Usurper cannot forfeit the right of another in whom there is no fault.

3 Inst. 153^s in fir. 62
Hob. 167.

Note, that the Patron shall lose his presentation within this Law, although the Clerk be not privy to the corrupt Contract.

Co. 1274^s

E

And

And it should seem by the penning of this Act, that the forfeiture of the double value of the Church is incurred by the corrupt contract only; but the presentation is not forfeited to the King, unless the Clerk be *de facto* presented or collated upon such corrupt Contract.

*Clerk not privy
to the Simony.*

And it matters not whether the Incumbent that comes in by a Simoniackal contract were privy thereunto or not, as to making the Church void; but the great question is, whether the Clerk that is presented upon a Simoniackal contract, to which he is neither party nor privy, be disabled for that turn to be presented by the King to that Church.

Fowler vers.
Lip: horn P.
17 Jac.B.R.

I have seen the Report of a Case in the latter end of the Reign of King *James*, where it was adjudged, that if a Clerk were presented upon a Simoniackal Contract to which he was not party or privy, that yet notwithstanding it was a perpetual disability upon that Clerk as to that Living.

Cro. El. 788.
moor. 914
1.8nst. 120-a.
38nst. 154

And in the Case of *Baker and Rogers*, M.42 and 43 El.B.R. The case was, *Baker* agreed, the Church being void, to give the Patron 180 l. for the Presentation, who presented his Brother, who knew nothing of the corrupt Contract till after Induction: and though it was clear, that the grant of the Presentation during the vacancy

Chap. 3. Counsellor.

cancy was meerly void, and that *Baker* presented as an Usurper; that yet notwithstanding the Clerk was in by the corrupt Contract; because it was not to be intended, that the Patron would have suffered the Usurpation, had it not been for the corrupt Contract: and there it should seem by Mr. Justice *Warburton*, that the Clerk was disabled *quoad banc*.

And in a Cause between the King and the Bishop of *Normich, Cole and Sair*, Sir *George Crook*, who was a Council in the cause, reports, that Sir *Edward Cook* affirmed it had been adjudged, that if a Church be void, and a stranger contracts for a Sum of Mony to present one who is not Privy to the agreement, that notwithstanding the Incumbent coming in by the Simoniackal contract, is a person disabled to enjoy that Benefice, although he obtain a new Presentation from the King; for the Statute, as to that Living has disabled him during life.

I must acknowledge, if the Law be so taken, it is very severe; but let us hear Sir *Edward Cook* himself speak, and he in his Comment upon this Statute says, that it was adjudged in the before-mentioned Case of *Baker and Rogers*, that where the Presentee is not privy nor consenting to any such corrupt Contract, as is forbidden by this Statute (because it is no Simony in him) there the Presentee shall not be ad-

Cro. Jac. 384.
Bull. 3. 924

3 Inst. 154.

judged a disabled person within this Act; for the words of the Statute are (*And the person so corruptly giving*): So as he shall not be disabled, unless he be privy to the Contract; and so says he there it was resolved. *M. 13 Jac. V. an. Hob.*

Co. 12. 101.
3 Inst. 154.

And Sir *Edward Cook* in that Book, that goes under the name of his *twelfth Report*, and without doubt was his own, reports, that it was so adjudged in the case of *Doctor Hutchinson Parson of Kenne in Devonshire* by the whole Court, that if a Clerk be presented upon a corrupt contract within this Statute, although the Clerk be not privy thereunto; yet the presentation, admission and induction are all void within the Letter of the Statute: for the Law intended to inflict punishment upon the Patron, being the Author of this corruption, by the loss of his presentation; and upon the Incumbent, who came in by such a corrupt Patron, by the loss of his Living, although he never knew of the corrupt Contract; but if the Presentee were not cognizant of the corruption, then he's not within the clause of disability within the same Statute; and so (says he) was the opinion of all the Judges of *Serjeants-Inne* in *Fleetstreet. Mich. 8. Jac.*



And it seems to me upon the penning of the Statute, that this opinion is more rational than the former, for the words of

of the Statute are; *That the person so corruptly taking, procuring, seeking or accepting, shall, &c. from thenceforth be adjudged a disabled Person in Law to have or enjoy, &c.* And though the Incumbent in this case take and accept the Benefice upon the corrupt Contract, yet as to him it is not corruptly taking. * But this being a point thus controverted, I shall not take upon me to determine, but leave it to the Judgment of the more learned.

† I shall in the next place shew what Contracts have been held Simoniackal within the meaning of this Law.

In a Cause between Doctor *Granns* and one *Bowden*, it was held || (upon an Evidence to a Jury) that where two Parsons agreed to change their Livings, and the one promised his Patron that if he would present the other with whom he was to exchange, that he should make the Patron a Lease of his Tithes at such a Rent; and this was held Simony, although the other was not privy to the Contract, he making the Lease after.

The Father in the presence of his Son being a Clerk, purchased the next advowson of a Church, the present Incumbent of the Church being sick, and not likely to live, who soon after died, and he presented his Son: and this was held Simony within this Statute; but if this had been done in the absence of his Son, it had not

It should seem that by the Canon Law one that is Simoniack promoted may upon a voluntary resignation be dispensed with to have the same Living again
Greg. Decret. de translatione Episcop.

tit. 7. & li. 5. tit. 3. cap. 26.

* *Quare.*
 † *what Contract shall be said Simoniackal.*
 || *Hill. 16 Jac. ro. 667. C.B.*

More 916. Cro El. 685. Smith vers. Shelburne.

been Simony, because the Father is bound to provide for his Son. *Quere* of the difference.

Winch. 63.
Sheldon *vers.*
Brett.

And by *Hutton* it was held Simony to purchase the next Advowson, the Incumbent being sick.

Hob. 165.

In the Case of one *Winchcombe* against the Bishop of *Winchester* and *Buleston* the case was, one *Say* bargained with the Patron (the Incumbent being sick) for ninety pounds to present him when the Church should be void, and for the better assurance took a Grant of the next avoidance to Friends in trust, the Incumbent died, *Say* was presented, and this was held Simony within this Law.

Bonds for Resignation.

There is of late time a practice introduced by corrupt Patrons, that, if not nipt early in the budding, will make this good Law of no effect; I mean the taking Bonds for resignation. And this practice took its rise from two cases in *Sir George Crook's Reports*.

Cro. Jac. 248.
274.

The first was between *Jones* and *Lawrence* 8 Jac. The Case was thus: *Jones* had a Son which he intended to be a Clergy Man, and having obtained a Presentation from Queen *Elizabeth*. for the Church of *Streetham*, agreed with the Defendant that he should be presented, so that he would resign when *Jones's* Son was qualified for the Living; whereupon the Defendant entred into a Bond of a thousand Marks

Marks penalty to the Plaintiff upon this condition (having first recited the agreement) that if the Defendant within three Months after request should absolutely resign his said Benefice, that then &c. And in an action of debt brought upon this bond the Defendant pleaded *non requisivit*, which was found against him; and in arrest of Judgment it was moved, that this Bond was made for the performance of a Simoniacal contract, and therefore void; but notwithstanding the Court gave Judgment for the Plaintiff, and two reasons are given for the Judgment; the first was because there was no averment of the Simony, the second that it was not material as to the Bond, because that Statute did not make the Bond or Contracts void, but only the presentation, &c. for this I clearly infer from the conclusion of the case. But I confess the sense of the Court was, that in truth if a man be preparing a Son for the Clergy, and have a Living in his disposal which falls void before his Son be ready, he may lawfully take a Bond of such person as he shall present to resign, when his Son is become capable of such Living; and I have nothing to say against that opinion, but it is very just and reasonable, Nature obliging that every one should take care for his posterity: but if a Patron take a Bond absolutely to resign

Cro.ubi supra.

upon request without any such cause as the preferment of a Son, or to avoid pluralities, or non-residence, or such reasonable cause, but only to a corrupt end and purpose to exact money by this Bond from the Incumbent, or attempt it, though perhaps the Bond may be good against the person that entered into it, yet I am clear of opinion for my own part, that the said Bond makes the Church void, and gives the presentation to the King; and it should seem in *Jones and Lawrence's* case, that if Simony had been averred, it would have been left to a Jury to have adjudged what the intention of the corrupt Patron was.

Cro. Car. 180.
Hut. iii. Jones
220.

The other case upon which these subtil Simonists build, was between *Babington and Wood*, 5 Car. 1. B. R. where the Case was likewise in debt upon an Obligation with a Condition, that whereas the Plaintiff intended to present the Defendant to such a Living, that if the Defendant upon request after his admission should resign, that then the Bond to be void, &c. Upon Oyer of this Bond and Condition, the Defendant demurred, and Judgement was given for the Plaintiff. But all the Court conceived, that if the Defendant had averred, that the Obligation had been made with intent to exact money, make a Lease, &c. which in itself had been Simony; then upon such a Plea

Plea peradventure it might have appeared to have been Simony, and then it might have been a question, whether the Bond had been good or no; but upon this Demurrer it did not appear there was any Simoniackal Contract, and such a Bond might be made upon a good and lawful design, as the preferment of a Son, as in *Jones and Laurence's* case before, to avoid non-Residence, Pluralities, &c. So that it appears by both these Cases, that Bonds taken upon prudent and just ends to resign are non-Simoniackal, but where such Bonds are taken upon corrupt designs, and it be made appear by any subsequent practice or action, it is clearly Simony, as if the Bond had been expressly to pay money; for what difference is there between a Bond expressly to pay money, and a Bond to resign, which is to pay money, if the Patron say, either pay me so much or resign, when all the world knows in such a Case the Parson must pay the money, or resign and be undone? And the world shall never persuade me, that those Reverend Judges that gave these Judgments ever intended further: and I hope that those Reverend Judges, that now supply their places, will discountenance and discourage such practices that tend so much to the ruine of the Church and Religion; for I know no Law that tends more to the advancement of learned and religious men

Noy 22 T.
15 Jac. 10.
1051. C. B.

men than this Law doth, and therefore ought to have a benign construction to the end it was designed.

I find a Case reported, I cannot say that it is by an Authentick hand, but such as it is I will give it the Reader; it was between Sir John Pascal and one Clerk in the 15th year of King James, upon evidence to a Jury it was held, that such a Bond was Simoniackal, but the Circumstances not appearing in the Book, the Case can be of no great Authority.

But before I shake hands with these Bonds of Resignation, it will be convenient I give my young Clergy-man some cautions against them; for it is an old saying, the Refetter is worse than the Thief, for without refettors there would be few Thieves.

receiver

Advice against
Bonds for Re-

And 1. I hold it a great disreputation for any Clergy-man to give any such Bond, which may have the least tincture of Simony; nor do I believe any man of worth will do it; unless it be upon such reasons as aforesaid.

2. If such Bond carry with it a Simoniackal corrupt design, it makes the Clerk no less guilty of Simony than the corrupt Patron; and then the Clerk not only loses his Living by this Statute, but is for ever incapacitated to have it by any future Presentation, and by the Canon-Law is

to be degraded and incapacitated to all
 other. *C. 1. q. 1. Presbyter si, &c.*

*Cincil. Re-
 mens. si quis
 vendiderit*

Lastly, If he do not resign upon re-
 quest, he is subject to the whole penalty
 of the Bond ; for Simoniacal Bonds,

*3 Inst. 153.
 Margine Noy
 72.*

Contracts, &c. are not made void by this
 Act, but only the Presentment, &c. And
 so you may observe a difference between
malum in se, and *malum prohibitum* by
 the Statute, or by the Canon-Law, where-
 of the Judges at Common Law take no
 notice.

These Bonds for Resignation are be-
 come so frequent, that hardly a Living
 passes, unless by Persons of Honour,
 without them, and very ill use is made
 of them. There's a poor Vicar in my
 Neighbourhood that has a Vicarage but
 of 40. *l. per annum*, and was forc't into
 one of these Bonds to obtain it, and his
 Patron takes from him Tithes of half
 the value of the Church, and he dares
 not question him for them; *Opus est me-
 dico.* It is time for the Clergy to pre-
 fer a Bill in Parliament, not only to
 make all such Bonds void, but likewise
 all Bonds, Bills, Covenants, Promises,
 Judgments, Statutes and Recognizances,
 made or entred into upon any Simonia-
 cal contract. Certainly no good man
 would oppose it; a fit undertaking for
 my Lords, the Bishops.

It

What Covenants
and Agreements
are within this
Law.

Cro. Car. 425.

It is now to be considered, what Covenants or Agreements shall be said to be Simoniackal within this Law.

If a Father-in-Law upon the Marriage of his Daughter covenant with his Son-in-Law without any consideration, but voluntarily, that when such a Church falls void, which is in his gift, that he will present him to it, this is no Simony within this Law; but it should seem, that such Covenant in consideration of marriage, or any other consideration had, made it Simoniackal.

Nov 142.
Baker vers.
Mountford.

So where the Patron took a bond from the Presentee to pay 10 l. yearly towards maintenance of his Predecessor's Son, whilst he remained in the University unpreferred, was held no Simony: And in that case it was said by Foster Justice, that it was adjudged in the Earl of Suffex's case, where the Patron took a bond of the Incumbent to pay 5 l. per annum to the Widow of his predecessor, it was not Simony; these were good charitable Resolutions; *sed quere rationem inde*; and Foster said, that notwithstanding great opposition in that case, the Parson enjoyed the Living at that time.

In the next place it will be fit to consider, what Church-preferments are within this Law; the Statute only names Benefices with cure of Souls, Dignities in the Church, Prebends and Livings Ecclesiastical.

cal. The word Benefices with Cure of Souls seems chiefly aimed at Parsons and Vicars in Churches Parochial: Dignities comprehend ArchBishops, Bishops, Arch-² Inst. 155. decons, Deans, Chancellors, Treasurers, Chaunters, Precantors, Officials, &c. For Dignities Ecclesiastical are defined by the ^{Lindwood. cap. ut Clericali} *Civilians* to be *Administratio cum Jurisdictione aliqua conjuncta*. And Lindwood ^{verb. dignit. Duarnus de sacris Eccles. ministr. & beneficiis. lib. 2. c. 6.} tells us, *Dignitas cognoscitur altero de tribus modis, primo quando beneficium habet administrationem rerum Ecclesiasticarum cum Jurisdictione: Secundo ex eo quod habet nomen dignitatis cum prerogativa in ebor* ^{ut verb. dignitate.} *& capitulo: Tertio quando constitutio vel consuetudo Ecclesie habet, quod beneficium habeatur & reputetur pro dignitate.*

And in another place speaking of Dignities he says, *Proprie loquendo de dignitate ordo Episcopalis dicitur dignitas; sic Abbates, Priores conventuales, & officiales Episcopi, dicuntur dignitates, & in inferioribus Episcopo jus non imponit nomen dignitatis, nisi Archidiaconis & Archipresbyteris, propter Jurisdictionem, & praeminentiam: quas habent super alios: Imo licet (says he) Archidiaconi nullam haberent Jurisdictionem ex consuetudine, tamen ratio nominis sonat in dignitatem, &c.*

Prebends are particularly named, and Livings Ecclesiastical are words of a large extent, and draw in Donatives within

^{Fletcher vers.}

^{Machaller T.}

^{7 Car. 1. B.R.}

within the penalty of this Law, as hath been adjudged, though they have no cure of Souls.

Having held the Reader something long in my discourse upon the matters relating to the first paragraph of this Statute, I shall after some general Observations upon it draw to a conclusion.

*Who may take
advantage of
Simony, quod
nota.*

*Sir Jo. Rowle
vers. Wright.
P. 17. Jac.
Hob. 167, 168,
177.*

*contract not
executed.*

*Hob. 167.
Supr. 49.
3. Inst. 153.*

*Simonist dies
possessed, if the
King lose the
turn.
Hob. 166.*

And first it is to be observed, that where any Clerk is in by Simony, or any other dignified person, every stranger as well as the King may take advantage of it: and therefore if the Parson, Vicar or other dignified person shall bring any action for the Tithes or other things belonging to his Church; the Defendant may avoid the Action by proving, that the Plaintiff obtained his preferment by a Simoniack Contract.

And note, that a Simoniack Contract, where the party is not presented in pursuance of it, is not within the penalty of this Law; but it should seem, that if one that has no right present a Clerk upon a Simoniack Contract, he is within the penalty though an Usurper, but not, as hath been said, to give the King the Presentation.

It hath been a question, If the Clerk which comes in by Simony die in possession of the Church, whether the King should lose his Presentation: but it hath been resolved that he shall not; for the Statute

Statute makes the presentation, admission, institution, and all void; so that the Church was never full of an Incumbent, & *nullum tempus occurrit Regi*. But if the King suffer an Usurpation by the Patron or any other, presenting another Clerk, who is instituted and inducted, and after dies incumbent, in such case the King loses his presentment; and so it should seem if the Incumbent resign, or be deprived, the Church having been once full.

And note, there may be Simony, and neither Patron nor Clerk consent or be privy to it; and yet the Church for that turn is by Statute given to the King: if the Clerk be presented by the means of such corrupt Contract, though neither Patron nor Clerk were privy or consenting to it; so the King, though he himself cannot be guilty of Simony, may present upon a Simoniackal Contract between others, and such presentation is void by this Act.

Suppose a Clerk be presented upon a Simoniackal Contract, and then the King or Parliament, that is, the King in Parliament with the Assent of his Lords and Commons, pardons all Simony by express or general words, though this may pardon the Penalties, yet the Church remains void.

Simony and

Patron and

clerk free.

Bath vers.

Porter p. 17:

Jac. B. R.

Pardon of Si-

mony the effect.

Lea vers.

Smith M. 40.

& 41 El. C. B.

contra.

Hob. 167.

*De ministerio
& hab. 1. q. 1.
Canon cum or-
dinator.*

3 Inst. 155.
*The reason of
the Paragraph
against preci-
pitate Admiss.*

I shall now conclude this paragraph with the saying of a holy Father of the Church, viz. *St. Ambrose* upon this Subject: *Cum ordinaretur Episcopus quid dedit? aurum fuit: quid perdidit? anima sua fuit: Cum alium ordinaret quid accepit? aurum fuit: quid dedit? Lepra fuit.*

I am now come to the second paragraph of this Statute, which *Sir Edward Cook* (who was a Member of this Parliament) tells us was added to avoid hasty and precipitate admissions, institutions and inductions, &c. to the prejudice of those that have right to present, and thereby putting them to their actions to recover their rights, and there are seldom bribes (as I may say) in this case given, where the Patron has a good and sure Title.

The taking or giving above the usual Fees in this Case is as well dangerous to the Clerk as the Officer: for the Church shall be void, so that the Patron, that has right to present may present again; and the Usurper and Officer, that takes more than his Fees for such expedition forfeits double the value of the Benefice for a year, not according to the rate in the first-fruits Office, but according to the very true value: but upon this Clause no disability rests upon the Incumbent, but that he may by the true Patron be presented again; nor lapse, till after six months from

from the time of notice given by the Bishop, &c.

And observe the penning of this clause *when the* it is not that the Church shall be *ipso facto* Church shall be void, or that the Institution, &c. should be void. void; but that it shall be *ex* soon void, and that the Patron shall present, as if the person were naturally dead: so that it should seem the Church is once full by this institution and induction; and hence there may some doubts arise, whether the Church shall be void *ipso facto*, or whether it must be avoided by Ecclesiastical Sentence of Deprivation: but it seems to me, that the Patron may present immediately without any Sentence Ecclesiastical.

3. The third Paragraph of this Statute is made against such as shall corruptly for money, pension, or other benefit, *Resignation and Exchanges Simoniacal.* resign or exchange their Livings with any other: in that case as well the giver as the taker forfeits double the Sum of money, &c. given and received; but this clause works no avoidance or disability in the person that is guilty.

The fourth Paragraph preserves the Ecclesiastical Jurisdiction, that they may proceed judicially to censure the Parties *The Ecclesiastical Jurisdiction saved.* for their corruption in buying and selling Church-preferments: whetein as should seem the Ecclesiastical Laws in some circumstances are more severe than this Statute; for by that Law, as I take it, he

F that

Cro. El. 788,
789.

that is convicted of Simony, is after incapacitated not only to that Living, but to all other Church preferments; but of this be informed by the Canonist. But I know no reason, why those corrupt Patrons, that take bonds for resignation without any reasonable cause apparent, may not be called to an account before the Ordinary, and punished by Ecclesiastical censures, if it appear they were taken to any corrupt end, or if afterwards he shall endeavour to exact money by colour of any such bonds.

*Corrupt giving
Orders and
Licenses to
preach.*

I am now come to the last Paragraph of this Statute, which is also a two-edged Law, that punishes as well the giver as taker of greater fee or reward than the ordinary and just fees for, or for procuring any person to be ordained or made a minister, or giving any order or license to preach, &c. but this is more severe upon the Clergy-man than the Officer: for the Officer only forfeits forty shillings, but the Clergy-man forfeits ten pounds, and all the Livings he shall take within seven years, are made void by this Law after Induction; so that for seven years an Incapacity lies upon the Clerk; how careful ought Clergy-men to be, what Fees they give for their Orders? And note the manner of the penning of this paragraph, that the Church shall not be void till after Induction, The first Paragraph makes the

pre-

presentation, institution and induction; and all void: So that the Church in that case is never full. The second Paragraph makes it void, not till after the corrupt admission, institution, installation, induction, investiture or placing; and this not till after induction; by which means the Grantee of the next avoidance that presents such Clerks, cannot present again: and so it is where the Patrons present by turn, the presenting such a Clerk will satisfy a turn, if inducted. Co. 5. 102. a

Lastly, observe all pecuniary forfeitures and penalties within this Statute are given to the King and Informer, and are to be recovered by Bill, Plaint, Action of Debt or Information in any of his Majesty's Courts of Record; that is, the Chancery, Kings Bench, Common Pleas, and Exchequer at Westminster; but not in any inferior Court of Record, and no essoin, privilege, protection or wager of Law is to be allowed; but I conceive the privilege or protection of Parliament are not intended in these general words, but the common protections and privileges of Officers and Courts. *How the Forfeitures are to be recovered.*

Gregory's case, Co. 6. 2 d;

It is not proper for this discourse to examine by what Authority any thing at all is taken for giving Orders, Admissions, Institutions, &c. Since our Savour says, *Gratis accepistis, gratis date*: *Quere.*

Ideo See a Canon against it, and what Fees shall be taken by the Clerks.

quere inde. *Lindw. c. 1. de sava & misc. rabilis.* *Mat. 10. v. 8.*

However since it is a thing (I doubt) too much practiced, use has made it seem lawful, by which means it is swallowed as a due fee without examination of the matter, I shall therefore put them that are concerned in mind of two other Canons, and then leave the matter to further consideration, and amongst those Canons, that are called the Canons of the Apostles, I find one to this effect:

Can. 30.

Si quis Episcopus, aut Presbiter, aut Diaconus, per pecuniam hanc obtinuerit dignitatem, dejiceatur, & ipse ordinator ejus a communione omnibus modis abscondatur.

And in the Council of Chalcedon to the same effect, which follows:

Si quis Episcopus per pecuniam Ordinationem fecerit, & pretium redegerit Spiritus Sancti gratiam quæ vendi non potest, Ordinaveritque per pecuniam, Presbyterum, aut Diaconum, vel quemlibet de his, qui cognominantur in clero, promoverit, & dispensatorem aut defensorem, vel quemlibet qui subiectus est regulæ, pro sui turpissimi lucri commodo, is qui hoc attentari probatus fuerit, proprii gradus periculo subjacebit, & qui ordinatus est, nihil ex hac Ordinatione, vel promotione quæ est pro negotiatione facta proficiat, sed sit alienus a dignitate, vel sollicitudine, quam pecuniis acquisivit, &c. Concil. Cabilonense, ca. 16. ad eandem sententiam.

But

But it may be it will be said, that these Canons are against selling of Orders, but not against ancient and just fees, to which hear what the Council of Orleans says:

Ne quis Episcopus quibuslibet causis vel Can. 3.
Episcoporum Ordinationibus ceterorumque
Clericorum aliquid accipere presumat,
quia sacerdotem nefas est cupiditatis venalitate corrumpi.

And the Council of Lateran under Can. 63.
Pope Innocent the Third decreed, *Ne pro consecrationibus Episcoporum, aut benedictionibus, aut ordinibus, aliquid accipatur.* And to the like effect is the Council of Braga, ca. 4.

And our own Canons are to the same effect, and limit the Clerks fees to twelve pence for Letters of Institution and Collation, and six pence for Letters of Orders: But he that has a mind to satisfy himself herein further, let him read that most excellent History of the Council of Trent, which is faithfully translated by Sir Nathaniel Brent, where this point is excellently discussed *Pro* and *Con.* where I will leave my Reader and conclude this Chapter, and in the next place shew my Parson, Vicar, &c. what he is to do before, at, and after, his Admission, Institution and Induction.

Cap. Sava & Miserrabilis.

Pag. 492, 493, 494, &c.

C H A P. VI.

The Sixth Chapter shews, what a Clerk is to do before, at, and after his admission, Institution and induction, to make him a compleat Parson.

Every Parson
and Vicar must
be a Priest.

S. at. 14. Car. 2.
cap. 4.
Subscription
and Certificate.

13 Eliz. ca. 12.
Read Prayers.

Read the Arti-
cles.

S. at. supra.

N O man at this day is capable to be Parson, Vicar, &c. before he is a Priest in Orders, which he cannot be before he is four and twenty years of Age, as has been said; and if any Person shall be admitted, instituted and inducted into any Living before he is in Holy Orders, his admission, institution and induction are void by the late Act of Uniformity. Secondly, he must make his Subscription according to the said Act, and have a Certificate from the Bishop or, &c. under his Hand and Seal that he hath so done, and then within two Months after he is inducted, he must during Divine Service (that is, after some part of the Divine Service of the Church for that day appointed is read, and before the whole is finished) read the nine and thirty Articles of Religion in the Parish Church, &c. into which he shall be inducted, and declare his unfeigned assent and consent to all that is therein contained; and in default herein the Church is *ipso facto* void

void without any sentence declaratory; Co. 6. 29. b. and it is not enough for him to declare his assent to them so far as they are agreeable to the word of God, or with any qualification, but positively. 4 Inst. 324.

And he must likewise upon some Sunday or Lords day, within two Months after actual possession of such Benefice, &c. (which is intended within two Months after induction or installation, &c.) read the Book of Common Prayer (that is, the whole Service of the Church appointed for that day, as it is there appointed) and likewise declare his assent and consent to all the matters and things therein contained in these words; *I A. B. do declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the Book intituled, The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the form or manner of making, Ordaining and Consecrating of Bishops, Priests and Deacons.* Stat. supra; Declaration;

And such Parson, Vicar, &c. must within three months after his Institution, upon some Lords-day, during Divine Service (that is, as hath been said, after some part of it be read, and before all be read) publicly and openly read his Certificate

from the Bishop, &c. of his subscription to the Declaration following; and he must at the same time read the Declaration or Acknowledgment it self in the Church where he is to officiate before the Congregation there assembled. The Declaration follows:

I A. B. declare, that it is not lawfull upon any pretence whatsoever, to take arms against the King; And, that I do abhor the Treasonable position of taking Arms by his Authority against his person, or against those that are commissioned by him; And that I will conform to the Liturgy of the Church of England, as it is now by Law established. And I do declare that I do hold, there lies no obligation upon me, or on any other person, from the Oath commonly called the Solemn League and Covenant, to endeavour any change or alteration of Government either in Church or State; And that the same was in it self an unlawful Oath, and imposed on the Subjects of this Realm against the known Laws and Liberties of this Kingdom.

And if any Parson, Vicar, &c. fail in the doing of any of these things beforementioned, or any of these things be neglected, the Church becomes void; and the Clerk that makes such failure, in case he shall sue for his Tithes, or any other Church-duty, or other thing belonging to his Church; if the Defendant insist upon

upon it, must prove the doing of all these things: But usually the Judges in favour of the Clergy, after they have been in possession of their Livings ten or twenty years, or any considerable time, will presume all these things regularly done, and will not put the Parsons, &c. to the precise proof of them.

And it is to be observed, that the Parsons, Vicars, &c. must upon the acceptance of every new Living or Ecclesiastical preferment within this Law repeat all these things; for the performance of all these things upon the taking of one Living will not satisfy for any other.

I shall give my reverend Clergy-men therefore this caution, that if any of them have accepted any Ecclesiastical preferments, and have negligently omitted any of these things, and that thereby they may be lapsed to the King, that they obtain presentations from the King *ad Corroborandum*; and that thereupon they perfect all their former neglects; or they may obtain Letters Pattents of Conformation which may be pleaded in bar of any *Quare Impedit* after brought by the King.

And for the future I advise them, that they first have some credible Witnesses present, when they make their Subscriptions before the Bishop; and that they attest the Bishops Certificate; and that they

Dyer 346. p. 7.
Co. 6. 29. b.

*Advice to the
Clergy.*

Rastall's Ex-
tries.

Quar. Impe.
Roy 22 plo.
528 b.

11 H. 4. 9. a.

Hob. 302.

Dyer 392. p.

70.

25 E. 3. 47. a

they get two Books of Articles; and that when they read the thirty nine Articles, they give one of those Books of Articles to some credible Parishioners to read with them, and then attest the Book, that they were present, and heard the Clerk read the said thirty nine Articles during the time of Common Prayer, and declare his unfeigned assent and consent to all the matters and things therein contained, by subscribing their names thereunto; and that the Clergy-man keep safely the said Book of Articles with this attestation.

And I advise, that when he reads the Book of Common Prayer, which must (as above is said) be read Morning and Evening, in all things which is prescribed therein, within two months after induction; that he likewise make some intelligent Parishioners to read with him, and give them a Copy of the Declaration aforesaid, and at the foot of it take an attestation under their hands of his reading the said Book of Common Prayer and Declaration, which may be done in this Form.

First, in a fair legible hand write the Declaration aforesaid; then write under to this effect,

Memorand. *That upon Sunday the*
Day of *in the Year of our Lord.*
A. B. Parson of D. in the
County

County of D. read Common Prayers in the Parish Church of D. aforesaid, both in the forenoon and afternoon of the same day, according to the Form and Order prescribed and directed by the Book intituled, The Book of Common Prayer, and Administration of the Sacraments, and other Rights and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, the Form or manner of making, Ordaining and Consecrating of Bishops, Priests and Deacons; and immediately after the reading the same, made a Declaration of his unfeigned assent and consent, to all the matters and things therein contained in the Form and words above written: And then let the Witnesses hereunto subscribe the same Certificate; which the Clerk is too keep carefully with his Institution, Induction and Certificate, with the book of Articles attested, as is before directed. And in these things I advise all Clergy-men to be very tender and careful.

There was an Act made in the thir-¹³ El. cap. 11;teenth year of Queen Elizabeth, That ^{what age a} none should be admitted to any Benefice, ^{Parson ought} unless he were three and twenty years of ^{to be of} age, and a Deacon at least, and should subscribe the thirty nine Articles before he should be admitted; and that none should be

be admitted to Preach or Administer the Sacraments, unless such Persons were 24 years of age at least: But this Law is in part altered by the beforementioned new Statute of Uniformity; for now none can be admitted to any Living till he is a Priest in Holy Orders, which he cannot be by this Statute till he is four and twenty Years of age.

And by the same Statute it is enacted, that none should be admitted to any Benefice of 30 l. *value with Cure of Souls of the value of per annum in thirty pounds or upward in the Kings Books, unless he be a Batchelor of Divinity at least, or a Preacher licensed by some Bishop, or one of the Universities of this Kingdom; and if not so qualified his Institution to be void.*

Oteley vers
Shepheard
circa 13 C^{sr}. 1.
C. B. m. Qua.
Imp.

If one be instituted into a Benefice under the age of 23 years whereby it is made void within the statute of 13 Eliz. yet laps shall incur because the presentment is not made void.

CHAP.

CHAP. VII.

The Seventh Chapter shews the duty of the Parson, Vicar, &c. after Induction, and the former Ceremonies performed; and treats of Non-Residence, and the penalties thereof, and for what reasons the same may be excused.

HE that has orderly, as aforesaid, obtained an Ecclesiastical preferment in the Church of England, must be conformable to the Government and Orders thereof, and must not use any other publick Form of Prayer, than what is prescribed by the Book of Common Prayer before mentioned, neither must he administer the Sacraments of Baptism and the Lords Supper in any other manner or form, than what is therein and thereby directed and prescribed.

And if any Incumbent be resident upon his Living (as he ought to be) and keep a Curate, he is bound by the Act of Uniformity once every month at least to read the Common Prayers of the Church, according as they are directed by the book of Common Prayer, in his Parish Church in his own person, or he forfeits 5 l. for every time he fails

Parsons &c.
must be conformable.
Stat 1 Eliz.
cap. 2.

Stat. 14 Car. 2.
cap. 4.
When, and how
oft he must
read the Com-
mon Prayers.

fails therein. See the Statute how he is to be convicted, and the penalty to be levied.

Before every
Lecture.

And the Common Prayer by that Statute is to be read before every Lecture: and it is not sufficient to read a piece here, and a piece there, where the party pleases; but they must read the whole appointed for the day orderly, as it is appointed with all the Circumstances and Ceremonies of kneeling and standing, as is prescribed, otherwise it is no reading of Common Prayers within this Law; quod nota.

Stat. 14 Car. 2.
cap. 4.

And note, that by the late Statute of Uniformity, the former Statutes of Uniformity and Penalties therein are extended to this Book of Common Prayer now lately established.

Stat. 1 Eliz.
cap. 2.

And by the Stat. of 1 El. It is enacted That, if any Minister, that ought or should sing or say Common Prayer, &c. refuse to say the same Common Prayers, or to administer the Sacraments, &c. in such order and form as they are mentioned and set forth in the Common Prayer Book, or shall wilfully or obstinately standing in the same, use any other Rite, Ceremony, Order, Form or Manner of Celebrating the Lords Supper, or other open Prayers, or shall preach, declare or speak any thing in derogation or depraving of the same Book, or any thing therein contained, &c. upon Conviction the Party guilty of any of these offences forfeits the profit

The Penalty for
sing other
Forms of Prayer,
&c.

profits of all his Livings and Spiritual Promotions for a year, and is to suffer Imprisonment for six months without bail or mainprise; and upon a second Conviction for the like offence he is to suffer imprisonment for a whole year, and be deprived ipso facto of all his spiritual promotions; and upon a third Conviction for the like offence shall be imprisoned during his life, and lose all his Spiritual promotions, if he have any: And if such person have no spiritual promotions, then for the first offence he is to be imprisoned for a year, for the second during life without bail or mainprise.

I have been the briefer in these matters upon the Statutes of Uniformity, because they are printed at large before the book of Common Prayer, to which I refer the Reader for his fuller satisfaction; and they are so plain and full, that they need no Comment, but to advise all Clergy men to read and observe them cautiously.

I shall only give the Reader this further caution, That if any Parson, Vicar, &c. shall maintain any Doctrine, contrary to the thirty nine Articles of Religion, it is cause of Deprivation; or if he administers the Sacraments in any other Form than is prescribed by the Book of Common Prayer, he forfeits 100 l. by a Statute made in the 13 year of Queen Eliz. And by the new Statute of Uniformity this

this penalty is extended to such as do contrary to the present Book of Common Prayer now used.

The next duty incumbent upon the Parsons, Vicars, &c. is, that they be resident upon their Cures, a Duty incumbent upon every one, that hath the cure of Souls in the Church of Christ; for, as *Padre Paolo* in his most excellent History of the Council of *Trent* observes, that in the first 700 years after Christ, there was not any such thing known in the Western Church, that any man should have an Office or Title in the Church, and not do the duty; and many Canons and Decrees have been made against Non-Residence. And in the Council of *Trent* it was held by much the greater and better number of the Prelates and Fathers in that Council, that Residence was *Jure divino*, and undoubtedly had been so decreed, if the Pope had not used all his old Stratagems against it; but whilst the Pope had power to dispense with residence, all the Canons and Decrees of that Church were of little greater effect than to fill his Coffers with money; for in this Kingdom, how many Bishopricks, Abbies, Priories, &c. were enjoyed (I mean the profits of them) by Forreigners, that never saw them, or took any care of their duties? I should be glad if it were much better now.

Page 217. in
the English
Translation.

Non Residence
when it came
into the
Church.

For same hist.
p. 217. &c.
486, &c. 509,
&c. 496.
Residence Jure
Divino.

The

The Commons of *England* often complained against Pluralities and Non-Residence, and in the Parliament held 2 H. 4. *The exact Abridgment of Records, nu. 50.*

4. The Commons prayed, that all such as procured from *Rome* (for in those days they came from *Rome*) any Bulls for Pluralities or Non-Residence, should incur the pain of Provisoes, except the Chaplains of Archbishops and Bishops; and Schollers; and those that had any Bulls should cancel them.

And in the Parliament held 8 H. 4. *Ibid. 8 H. 4. num. 113.* the Commons petitioned that the King might have a moiety of the profits of all Benefices where the Incumbent was Non-resident.

The like was prayed in the Parliament in 9 H. 4. *Ibid. 9 H. 4. num. 70.*

In the Parliament 4 H. 6. it was *Ibid. 4 H. 6. num. 38.* prayed by the Commons, that all Parsons and Vicars, and others having cures, and not being resident thereupon, should forfeit their Benefices, the one half to the King, and the other half to the Patron.

In the Parliament held the same year *Ibid. 4 H. 6. num. 31.* the Commons prayed, that for the Non-residence of the Incumbent the Patron might present a new Clerk; and great reason in my Judgment, and very agreeable to the Rules of the Common Law, where a Temporal Officer loses his Office for non-user; And I know no reason why

it should not be so in Spiritual Offices, where the Souls of a many poor people are neglected. But these had none of them the good fortune to be reduced into Laws, but I presume these complaints in Parliament so awakened the Pope and Clergy, that there was some reformation; for I find no more complaints in Parliament concerning this matter, till the 21 H. 8. in which Parliament it was enacted;

21 H. 8. cap. 13.
*An Act against
 Non-Residence.*

That as well every Spiritual Person then being promoted to any Archdeaconsry, Deanery or Dignity in any Monastery or Cathedral, or other Church Conventual, or Collegiate, or being beneficed with any Parsonage or Vicarage; as all and every spiritual Person, which then after should be promoted to any of the said Dignities or Benefices with any Parsonage or Vicarage from the Feast of St. Michael then next following, should be personally resident and abiding, in, at, or upon his said Dignity, Prebend or Benefice, or one of them at the least; and that if any such person wilfully absented himself from his said Benefice, &c. by the space of a Month at one time, or two Months at several times in any one year to be accounted at several times, that such Person so absenting himself should forfeit 10 pounds for every such default, the one half to the King, the other half to the Informer, to be recovered, as is expressed in the Act.

And

And by the same Act, there is a Proviso worth mentioning, though now out of date, to this effect:

That if any Person should procure any Dispensation from Rome or elsewhere to be non-resident, the Party guilty should forfeit twenty pounds. By this and other Statutes mentioned in this book it is evident, that the Parliaments of England, even when the Pope was in full power, often made bold with his Holiness to correct his, and his Courts corruption.

Certainly this was an excellent Law, if there had been no more in it but the dispensing with such persons as by the same Law are qualified to have two Livings; and the persons capable to qualify Chaplains to have pluralities had not been grown so numerous, that there are but few of the best Livings but they are held by Pluralists, and they either by colour of attending their Lords, their Deanries or Prebends, find an excuse to be non-resident, which has made this Law of little effect; nay, I doubt I may say, that we are now in a far worse condition than before the making of this Act, for Dispen-sations from Rome (as all other things there) were costly, came slowly, being far to fetch; that I presume there's ten Dispen-sations for Pluralities now, for one then; and few of those dispensed with were non-residents upon both Li-

G 2
vings,

vings, as now they be; Two great Parishes in many places being left to the care of two boys that came but the other day from School, and perhaps fitter to be there still, whilst the Shephard that takes the fleece, either feasts it out in his Lords family, or takes his ease upon a Prebend or Deanry.

*The ends of
this Law.*

*To do their
Duties.*

This good Law principally aimed at three ends or effects:

1. That every Clergy-man might attend his duty in reading the publick prayers of the Church, administering the Sacraments, preaching, inspecting the behaviour of his flock, and performing all sacred and divine Offices, like a good and faithful Shepherd: and I do wonder with what Conscience any Clergy-man can expect his dues from his Parishioners, that does not perform his duty in the first place.

*To avoid Dila-
pidations.*

2. The second end of this good Law, is to avoid Dilapidations in the buildings belonging to their Livings: for you shall seldom see a Non-resident, but he is also a Dilapidator; and 'tis no wonder that he that neglects the Flock, lets the Sheepfold go to ruine.

*To maintain
hospitality.*

Star. 15 R. 2
cap. 6. and
4 H. 4. cap. 12.

3. The third end of this good Law, was to maintain hospitality: and I would wish every Clergy-man to remember, that the poor have a share in the Tithes with him.

Pope

Pope Sylvester in the beginning of the fourth Century decreed, that the Revenues of the Church should be divided into four parts: *Quarum una cedat Can. 4. Pontifici ad sui sustentationem; altera Presbyteris & Diaconis, & omni Clero: Tertia Templorum & Ecclesiarum reparationi; Quarta pauperibus & infirmis, & pegrinis.*

And by a Canon of our own made in the time of King Alfred it is decreed, Can. 24. Lamb. 132: That the Tithes should be delivered to the Priest, who should divide them into three parts: *Unam partem ad Ecclesie reparationem; alteram pauperibus erogandam; tertiam vero ministris Dei qui Ecclesiam ibi curant.*

And by a Provincial Canon of our own it is ordered, Cap. In decimis. *Quod religiosi beneficia Ecclesiastica obtinentes, secundum hujusmodi beneficiorum facultates annis singulis pauperibus parochianis beneficiorum eorundem certam Eleemosynæ quantitatem, Ordinariorum ipsorum locorum moderandam arbitrio, per ipsos Episcopos distribuere compellantur, &c.* By all which it appears, that originally the Poor had a share in the Tithes.

And to this end the Statute enjoyns the Clergy-man to be resident in and upon his Living, that is, his Parsonage or Vicarage House, if he have any, and not at any other House in the Parish; but Imprison- Co. 6. 21. b. More 440. du-
ment biratur.

ment without fraud, or removing for health without fraud, or not having a House upon his glebe, excuses his residence for time; for the words of the Statute are (*That he that wilfully absents himself,*) So if any Parson, Vicar, &c.

- * But by the Stat. of 18 H.8. or in any Pilgrimage, or shall without fraud* abide in any University within this Realm to study, or is a Chaplain qualified within this Stat. to have Plurality of Benefices, or the Chaplains of any of the Judges of the Kings Bench, or Common Pleas, Chancellour or chief Baron of the Exchequer, of the Kings Attorney and Solicitor, and the Chaplains of the Chancellour of the Dutchy of Lancaster, of the Augmentations, First-fruits, and Tenths; of the Master of the Wards, the Surveyor General, of the Treasurer of the Chamber, and Augmentations, and Groom of the Stole, whilst such Chaplains abide, and are attendant in the Households of their Masters; and the Master of the Rolls, the Dean of the Arches, and the Chancellors and Commissaries of Archbishops and Bishops, and the twelve Masters of the Chancery so long as they shall continue in their places; may be non-resident: but the Chaplains of the Chancellour of the Dutchy, Augmentations, First-fruits, Master of the Wards, Surveyor General, Treasurer of the Chamber and Augmentations, and Groom
- 21 H.8. ca.13.
- 33 H.8. ca.28.

*Groom of the Stole, are to be resident twice 9 E. 2. ca. 8.
in a year at least, eight days at each time :*

*And the King may give License to any of
his own Chaplains to be non-resident : And
any Ecclesiastical Person to attend any Suit 21 H. 8. ca. 13.
in the Chancery or Star-Chamber with-
out fraud, may be non-resident for so long
time, &c.*

But if a Chaplain be qualified in re-
spect of his Service to have a Plurality,
and his Lord or Master die, be attaint of
Treason, Felony, or removed from his
place, it will not serve the Chaplains turn
to be resident upon one of his Livings
without the Kings special License with a
non obstante.

And here I must not omit an ancient Prerogative of the Kings of England, practiced in the height of Power, that where any Clergy-man were employed in the Kings service he might dispence with their non-residence; and if the Spiritual Judges went about to censure or punish them by Ecclesiastical Censures for such non-residence, the Kings of England have sent their Writs Mandatory commanding them to surcease.

But Bishops and Archbishops are not within this Law, but not exempt from this duty; there being several Canons that require it : and Bishops may be compelled hereunto by Ecclesiastical censures

*Master dies
&c.
Co. 4. 119. a. 1.
Co. 6. 21.*

*Register Or.
53. b. 1.
F. N. B. 44. g.*

*Concil. gener.
Const. Can 80.
Concil. Sard.
Can. 15. Con-
stitutio Othen.
Quid ad vent-*

Bishops refi-
dence requira-
ble.

2 Inst. 625.

by their Superiors; and the King may compel them by seizing their temporalities: a notable president whereof we have in the time of H. 3. When Popery was at highest, and the King not lookt upon as head of the Church; yet that King sent his Writ Mandatory to the Bishop of Hereford to be attendant upon his Bishoprick, otherwise he would seize of all his Temporalities. Which Writ, as well for the rarity as also for the Religious grounds upon which it was granted, will not be ungrateful to the Reader to see, and for whose satisfaction I shall give it him as I find it recorded by Sr. Edward Coke, and wish there were no cause to make use of it in these days:

Rex Episcopo H. salutem, Pastores gregibus preponuntur, ut disci, noctisque vigiliis exercendo, oves famelicas in fertilitatis pascua introducant: Errantes vero per verbum salutis, & virgam correctionis in unius ovilis conservare studeant indissolubilem unitatem: Sed sunt nonnulli qui hanc doctrinam dampnabiliter contempnentes, & sua ab aliis pecora distinguere nescientes, lac & lanam tollunt, qualiter dominicus grex alatur non curantes, temporalia rapiunt; Et quis in parochia fame pereat, aut periculetur in moribus, non attendunt; qui non Pastores, sed Mercenarii potius dici promerentur: Hoc siquidem dum hiis diebus ad disponendum
de

de regni nostri presidii in partes Mar-
ebia nos transferremus in Ecclesia vestra,
(dolenter referimus) nos invenisse, quam
adeo invenimus pastoris solatio destitutam
ut nedum Episcopum, sed nec officialem
haberet, Vicarium aut Diaconum qui quic-
quam spiritualitatis exercere possit in ea-
dem. Sed Ecclesia ipsa quæ olim deliciis
affluere consuevit, & Canonicis qui ibidem
nocturnis & diurnis officiis vacare, &
opera charitatis exercere deberent, eam
deserentibus & longe degentibus in remo-
tis, stola Fecunditatis exuta cecidit in
terram, viduitatis sue detrimenta deplo-
rans, nec est qui consoletur eam ex omni-
bus curis ejus: Sane dum hæc vidimus, &
consideramus diligenter, pietatis aculeus,
viscera nostra commovit, & compassionis
gladius intima cordis nostri acrius vulne-
ravit, ut tantam Ecclesie matris nostre
injuriam ulterius dissimulare non possimus,
nec pertransire incorrectam. Quapropter
vobis mandamus firmiter injungentes,
quatenus ad Ecclesiam vestram prædictam,
occasionibus quibuscunque postpositis, cum
ea quæ poteritis celeritate vos transferri
curetis, commissum vobis in eadem cura
pastorali officium personaliter Executur.
&c. Alioqui scire vos volumus pro con-
stanti, quod si istuc fieri non curaveritis,
bona temporalia, & omnia quæ ad baro-
niam ipsius Ecclesie pertinent, quæ do-
natione constat eidem fuisse collata, & quæ
hactenus

hactenus colligi & salvo custodiri precipimus in commodum & utilitatem ipsius Ecclesie convertenda, cessante jam causa in manu nostra totaliter capiemus, ne ulterius sustinebimus, quod temporalia metat, qui spiritualia ad qua ex officii sui debito tenetur, irreverenter subtrahere non formidat, aut quod emolumenta percipiam, qui incumbencia ejusdem onera subire recusat, &c. T. &c.

This writ was sent by H. 3. to Peter de Egueblanke a Savoyard, then Bishop of Hereford, who, as the Histories of those times relate had never a good, but many bad qualities, that constantly attend men that are negligent of their duties to God and Man in this kind, how little care soever he took of duty, you hear, *lac & lanam sustulit, temporalia rapuit*, by which means he was grown intolerable rich; and mark what came of his wealth, the Rebellious Barons seised on him in his Cathedral Church at Hereford, and took all his goods and Treasure and divided it amongst their Souldiers: Even so may it fare with all such Bishops.

Now my hand's in, I will beg the Readers patience to inform him what Pope *Damasus*, one of the better sort of Popes said in an Epistle of his to such Bishops; and it was thus:

Primum quod curam sibi commissam negli-

negligent, cum Dominus dicat; Bonus Pastor animam suam ponit pro ovibus suis, mercenarius autem videt lupo venientem, & demittit oves, & fugit, &c. Secundo, illi Episcopi qui talia presumunt, videntur mihi (ait) esse meretricibus similes, quæ statim ut pariunt, infantes suos aliis nutricibus tradunt educandos, ut suam citius libidinem explere valeant. Sic & isti infantes suos, id est, populos sibi commissos aliis educandos tradunt, ut suas libidines expleant, id est, pro suo libitu secularibus Curis inbient, & quod unicuique visum fuerit, liberius agunt, Pro talibus enim anima negliguntur, oves percutunt, morbi crescunt, hæreses & schismata prodeunt, Ecclesiæ destruuntur, sacerdotes vitiantur, et reliqua mala præveniunt. Non taliter Dominus docuit, nec Apostoli instituerunt, sed ipsi qui Curam suscipiunt, ipsi peragant & ipsi proprios manipulos Domino representent. Nam ipse ovem perditam diligenter quæsit, ipse invenit, ipse propriis humeris reportavit, nosque id ipsum facere perdocuit. Si ipse pro ovibus tantam curam habuit, quid nos miseri dicimur sumus, qui etiam pro ovibus nostris commissis Curam impendere negligimus, & alias eas educandas tradidimus? Corrigan- tur hec (fratres) necesse est, quia, qui plus laborat, majorem mercedem accipiet.

And now I have done with Non-residence, one of the Pests of the Church:

I will in the next place shew what Dilapidations are; and the severl ways the same are punishable, this being often the effect and fruit of *Non-residence*.

CHAP. VIII.

Shews what Dilapidation is, and in what manner punishable, and what remedies the Successor hath.

*Dilapidations
what?*

A Dilapidation is the pulling down or destroying in any manner any of the Houses or Buildings belonging to a Spiritual Living, or the Chancel, or suffering them to run into ruine or decay; or wasting and destroying the Woods of the Church, or committing, or suffering any wilful wast in or upon the inheritance of the Church. And certainly there can be nothing worse becoming the dignity of a Clergy-man than *Non-residence* and Dilapidations, which for the most part go hand in hand. I wish our Church had not too much reason to complain of both. There have been divers Canons of the Church made against this crime, as I may justly call it; but as in others, so in this, I shall confine

fine my self to our own Provincials: and I find in a Provincial Council or Synod held under Edmund Archbishop of Canterbury, in the year of our Lord 1234. which was, as I take it, about the 18th year of H. 3. a Canon to this effect:

Si Rector alicujus Ecclesie decedens domos Ecclesie deliquerit dirutas, de bonis suis Ecclesiasticis tanta portio deducatur, quae sufficiat ad reparandam hanc, & alios defectus Ecclesie supplendos. Item statuimus circa illos Vicarios, qui solvendo modicam pensionem omnes Ecclesie habent proventus: nam cum ad praemissa teneatur talis portio deducta, satis poterit & debet inter debita computari; Semper tamen rationabilis consideratio sit habenda ad facultates Ecclesie, cum portio fuit habenda.

Canon against Dilapidation. Lindw. Chap. Si Rector alicujus Ecclesie. Vide Canon Othobon de domibus Ecclesiarum reficiendis in the Appendix to the 12th Chapter of this Book, hic in fine.

Now if it be demanded what Houses are meant within this Canon, the Gloss tells you, *ut puta mansum Rectorie, Vicarie & alia Edificia quaecunque, quorum Edificatio sive reparatio spectat ad ipsum Rectorem.*

By the Letter of this Canon the Rector is to repair the whole Church; but by the Custome of England the Owners of the Houses and Lands in every Parish are bound to repair the Body of the Church, and the Rector only the Chancel; unless by particular custome it hath been otherwise: And in this point the Common Law is kinder to the Parsons, Vicars, &c. than

Co. 5. 6. 7. Cro. Eliz. 659. Not to repair the Church but Chancel.

2 Inst. 653.

A Canon for
relief against
Dilapidations.

Verb. Ecclesi-
asticis.

than the Canon-Law: and the Common Law being here to be preferred against that part of the Canon: and the Gloss upon the words *defectus Ecclesie*, adds, *Hec littera potest intelligi de defectibus Ecclesie que pertinent ad curatum ipsius Ecclesie in solidum sic, quod non pertineant ad alium ut puta, in Cancellaria, & aliis ad onus Regis de jure vel consuetudine spectantibus.*

But this Canon seems only to affect the Ecclesiastical goods: and what they might be deserves the judgment of the Gloss; which tells you they are such *jure & nomine Ecclesie obvenientibus talia enim bona sunt per viam tacite hypothecae ad reparationem hujusmodi faciendum obligata.*

And if the goods of the Church shall not suffice, then the Gloss tells us, *Si Res bona Ecclesiastica expenderit in meliorem reparationem patrimonii sui, vel si propter nimiam diligentiam propriorum negotiorum neglecterit negotia Ecclesie procurare, Et sic Ecclesia sit dampnum passa, tenetur satisfaci de bonis suis patrimonialibus, si quae habuerit.* But there has been made a further question, whether satisfaction for dilapidations should be preferred in payment before debts and legacies: And as the Common Law prefers the payment of Debts before damage for Dilapidations; so the Ecclesiastical Law prefers the damage for Dilapidations before the payment of Legacies.

gacies; to which hear what the Gloſs ſays: *Si Legatarii tanquam Creditores petant legata ſibi reliſta, & Prelatus petat ſumptus reparationis Edificiorum Eccleſie; talis Prelatus debet præferri ceteris Legatariis*: and gives this reaſon, *Nam Legata ſolvi non debent niſi prius deducto ere alieno*. So that the Eccleſiaſtical Law agrees with the Common Law in this, that debts are to be preferred before legacies.

The next thing conſiderable is, what repairs are requirable in this caſe, which is answered by the Gloſs. *Et intellige hanc reparationem fieri debere ſecundum exigentiam & qualitatem rei reparande, &c.* *Verbo reparand.
hac.*

Thus far I have followed the Canon and Gloſs thereupon: Now in the next place we will ſhew you what we have relating to this matter amongſt the Laws and Statutes of this Realm.

And firſt, I find that at a Parliament at *Waſt by Bi-
Carlisle* in the 3^{5th} year of *Edward the ſhops.*
Firſt a great complaint was made againſt *Co. 11. 49. a.*
Anthony, then Biſhop of *Durham*, for waſt
and deſtruction of the woods belonging
to his Biſhoprick by gift, ſale, and other-
wiſe, and for erecting forges of Iron and
Lead, and making Charcoals of the *Cauſe of depri-
vation.*
wood to be ſpent in their Iron and Lead-
works, to the diſinheritance and im-
poveriſhing of his Church, and in preju-
dice of the King and his Crown, and of
the Chapter of *Durham*. To which the
answer

answer is, *Inhibetur per breve de Cancellaria Episcopo & ministris suis, ne faciant vastum de contentis in petitione.*

*M. 23. Ei inter
adjudicat co-
ram Rege
Huntf. 83.*

** or in the
Kings Bench
Bulstrode. 3.
158. More
917.*

Ror. Pat.

14 H. 3. m. 8.

Bulst. 2. 279.

** Hollingsh.*

181. b. 30.

† 20 H. 6. 46. a.

3 Inst. 204.

2 H. 4. 3. b.

Co. 11. 94. b.

29 E. 3. 15. a.

9 E. 4. 34. a.

** Causa 10*

q. 1. si quis

cafas Quasi-

tum fuit quam

penam debeat

patri Episcopus

quum alienat

rem Ecclesie

nulla necessita-

te cogente:

The Answer

was, Res ipsas

Ecclesie pro-

prie restaurare

cogatur & in

Judicio Episcoporum deprecatur auditus & convictus,

partu aut latrocinii reus fuerit honoris. Causa 12 q. 2. Aposto-

licus.

By which it appears, that if a Bishop or any other Clergy-man do waste upon the Woods or Lands of his Church, that prohibition may be sued in* Chancery to prohibite him: for *Ecclesia est infra astatem & in custodia Domini Regis, qui tenetur jura & hereditates ejusdem manu tenere & defendere.*

And the Archbishop of Dublin was fined 300 Marks for the disafforresting a Forrest belonging to his Archbishopric.

* And William, Abbot of Westminster, in the 15th year of King John, Anno 1212, was deprived because he had wasted the revenue of his Church or Abbey.

And it seems by several Books of the Common Law, * and by the Canons of the Church likewise, that in case a Bishop, Abbot, Prior, &c. waste the Lands, Woods or Houses of his Church, he may be deposed or deprived by his Superior: so that it appears clearly, that the fault in this case lies heavy upon those that have the Visitation and Superiority, that do not take care against the wasting and destruction of the Building, Houses, Woods, &c. of the Church; and that

the

the Successors should not be put to seek remedy against Executors and Administrators, who are too active in finding shifts to avoid their actions, to avoid which there is a good Law made in the thirteenth year of Queen Elizabeth to this effect.

That if any Parson, Vicar, &c. shall make any conveyance of his goods to defraud his Successor of his remedy, the like Suit is given in the Spiritual Court against the Grantee, as the Successor should have had against the Executors or Administrators of the Predecessors.

Statute against
fraudulent
Conveyances.
Stat. 13 Eliz.
cap. 2.

But this Act gives no remedy at Common Law, because by another Act made at the same Parliament all such Grants to defraud any Person or Persons of their just actions are made void.

Stat. 13 Eliz.
cap. 5.

So that the Plaintiff has equal remedy in both cases: Suits for Dilapidations are most properly and naturally to be sued in the Spiritual Courts; and if any prohibition should be granted, the same ought to be superseded by a consultation; but this is intended where the suit is grounded upon the Canon-Law.

Fitz. N.B. 51. f.

But the Successor may upon the Custom of England have a special Action upon the case against the Dilapidator, his Executors or Administrators, whereof there are multitudes of Precedents even in the time of Popery, whereof the Reader has a

Action upon the
Case at Law
for Dilapidations.
T. 8 H. 7. Ro.
69. B. R.

T. 18 H. 7. ro. last in the margin: By all which it appears, that by the Custom of England, which is the Common Law; omnes & singuli Prebendarii, Rectores, Vicarii Regni Angliae pro tempore existentes, omnes & singulas domos & Edificia Prebendarum, Rectoriarum & Vicariorum suarum reparare & sustentare, & ea Successoribus suis reparata & sustentata dimittere teneantur. Et si huiusmodi Prebendarii, Rectores & Vicarii domos & Edificia huiusmodi Successoribus suis sic, ut praemittatur, reparata & sustentata non dimiserunt & deliquerunt; sed ea irreparata & dilapidata permiserunt, Executores sive Administratores bonorum & catallorum talium Prebendariorum, Rectorum & Vicariorum post eorum mortem de bonis & catallis decedentium Successoribus talium Prebendariorum, Rectorum & Vicariorum, tantam pecuniam quantum pro necessaria reparatione & edificatione huiusmodi domorum & Edificiorum expendi magis solvi sufficiens, satisfacere teneantur.

And upon this Custome Actions of the Case have been frequently brought both anciently, and of later times, and damages recovered.

And note, that by a Statute made in the fourteenth year of Queen Elizabeth it is expressly enacted, That all the monies and damages that shall be recovered for Dilapidations are to be expended and laid out,

Stat. 14 Eliz.
cap. 11.

out, in, and about the repair of the Houses, &c. dilapidated, wherein the Visitors of those Churches ought to take care.

It will not be altogether improper to conclude this Chapter with the Statute of 35 E. 1. intituled, *Ne Rectores prosteruant arbores in Cæmeterio*; whereby it is enacted, or rather the Common Law declared to be in these words.

We do prohibit the Parsons of the Church Against cutting that they do not presume to fell them (viz. the Trees in the Church-yard) down unadvisedly, but when the Chancel of the Church wants necessary Reparations: neither shall they be converted to any other use, unless the Body of the Church do want repair; in which Case the Parsons of their Charity shall do well to relieve the Parishioners with bestowing upon them the same trees, which we will not command to be done, but we will commend it when it is done.

By this Law it appears, that the Church-yard and the soyl thereof is in the Parson, and by consequence the trees are in the Parson or Rector, that grow therein. But because the Trees that grow there are for the most part planted there for the shelter and ornament of the Church from tempests and storms; therefore the Parliament has granted a Prohibition in this Case against the Rectors and Parsons of Churches, that they should not cut down these trees for any other use,

but the necessary repairs of the Church and Chancel, which in truth was no more than what the Common Law enjoined: for if the Rector had gone about to have cut them down for any other use, the Patron might have had a Prohibition; but now I conceive the Rector or Impropriator, that cuts down any Trees growing in the Church-yard for any other cause than for the repair of the Church or Chancel, may be indicted and fined upon this Statute at the Common Law; for whatsoever may be prohibited before it is done, may be punished after it is done.

3 Inst. 205.

If the Bishops and Archdeacons in their Visitations would take care, these Dilapidations might easily be avoided, which are a great dishonour to the Clergy, and cannot be pleasing to God Almighty or good men: And the Canon enjoins the Archdeacons and other Officials, *ut in visitationibus Ecclesiarum faciendis diligentem exhibeant considerationem ad fabricam Ecclesie & maxime cancelli, si forte indigeant reparatione, & si quos invenerint defectus hujusmodi, certum sub pena prefigant terminum infra quem emendentur vel suppleantur, &c.*

Cap. Archidiaconi & infra.

CHAP. IX.

The ninth Chapter shews for what Causes a Parson, Vicar, &c. may be deprived by any Statute-Law; and what matters are allowed for good causes of Deprivation at the Common Law.

Deprivation or Deposition is, where a ^{Deprivation and Deposition} man by any Statute-Law, or by ^{quid.} any judicial Sentence Ecclesiastical, that hath proper Jurisdiction, is made incapable to hold or enjoy his Parsonage, Vicarage, or other spiritual promotion or dignity: and the causes of such deprivation or Deposition are properly and naturally determinable by the Ecclesiastical Laws of this Realm. But because generally ^{Where determinable.} there are Estates of Freehold dependant upon these promotions and dignities, and annexed to them inseparably, which rest at the sole determination of the Common Law; the Courts of Common Law do sometimes inspect and regulate the proceedings of the Ecclesiastical Courts; and where they proceed against the Rules of Common Law, they frequently prohibit them: I have therefore thought fit to shew what causes of Deprivation, or De-

position have been allowed and approved of by the Judges and Courts of the Common Law, or by any of the Statutes of this Realm. But there are many more Causes of Deprivation by the Canons and Laws Ecclesiastical, which being out of my profession I shall not presume to discourse of,

Can. Apost.
42. Mortimer
vers. Parker.
10 Jac.
*Simony cause of
Deprivation.*

1. If a Parson, Vicar, &c. be a common Drunkard, it is a just cause to deprive him of his Church preferment.

2. The Clerk that obtains any preferment in the Church by any Simoniack Contract or Agreement may be deprived by his Ordinary, &c. as it appears at large in the fifth Chapter here before upon that Subject.

1 El. cap. 2.
Stat. 14 Car.
2. cap. 4.
*To use other
Forms of Prayer,
er, the third
offence.*

3. That if any Parson, &c. shall refuse to use the book of Common Prayer or administer the Sacraments in the order there prescribed, or shall wilfully and obstinately standing in the same use any other Rite or Ceremony, Order, Form or manner of celebrating the Lord's Supper, or other open Prayers, or shall preach, declare or speak any thing in derogation thereof or depraving the same, or any thing therein contained, and having formerly been convicted for the like offence, shall upon his second Conviction be deprived ipso facto.

Stat. 14 Car. 2.
cap. 4.

4. If any Parson, Vicar, &c. shall not within two months next after Induction upon some Lords-day openly, publicly and

solemnly

solemnly read the Morning and Evening Neglecting to
 Prayers, appointed to be read the same day ^{read Prayers}
 according to the Book of Common Prayer, ^{within two}
 and after such reading shall not openly and ^{months after}
 publicly before the Congregation there as- ^{Induction.}
 sembled declare his unfeigned assent and
 consent to the use of all the things therein
 contained in such manner as is directed be-
 fore here in the seventh Chapter; and if
 there be any lawful Impediment, then if
 he do not do the same within one Month
 after the Impediment removed; such Par-
 son, Vicar, &c. shall be deprived ipso facto.

5. If any Parson, which shall have any ^{13 El. cap. 12.}
 Ecclesiastical preferment, shall advisedly ^{To maintain a}
 maintain or affirm directly any Doctrine ^{any doctrine a-}
 contrary or repugnant to the 39 Articles of ^{gainst the 39}
 Religion, and being convented before the ^{Articles of Re-}
 Bishop of the Diocese or Ordinary, or be- ^{ligion.}
 fore the high Commissioners shall persist ^{5 R. 2. tit. Tri-}
 therein and not revoke his Error, or after ^{al. 54.}
 such Revocation shall esoon affirm such ^{Miscreants, In-}
 untrue Doctrine he may be deprived. ^{fidels, Schis-}
^{matics and}

6. If any person shall obtain a prefer- ^{* a Misbeliever.}
 ment in the Church, which is a ^{† An Atheist,}
 Miscreant ^{&c.}
 †, Infidel, Schismatick or Here- ^{38 E. 3. 2. b.}
 tick, he may be deprived. ^{Dyer 8. and}

7. So if one be made a Parson, Vicar, ^{p. 254.}
 &c. that is not of free Condition, but a ^{Co. 5. 58. a.}
 Villain, or that is illiterate and not able ^{Dyer 293. p.}
 to perform his duty, or that is guilty of ^{1 and 2.}
 any heinous Crime, as Murther, Man- ^{Slave, Villain,}
 slaughter, Perjury, Forgery, or that is ^{illiterate and}
 mere ^{criminous per-}
 son may be de- ^{Laicus}
 prived.

Laicus, and not in holy Orders, he may be deprived.

* And so is the 8. * A Parson, Vicar, &c. may be deprived for being disobedient and incorrigible to their Ordinary, &c.

34 Can. of the Apostles Express.

Allen vers.

Nash. P. 13 Car 1. B.R. Disobedience to his Ordinary cause of Depriv.

Cro. Jac 37.

Non-conformity.

Quod nota.

9. And it was resolved by all the Judges of England 2 Jacob. That Non-conformity was a good Cause of Deprivation, and it was declared by them all, that in case any Canons were made by the Clergy for the good Government of the Church, and approved and confirmed by the King (as they ought) that the obstinate disobeying of them was a just cause of Deprivation.

11 H. 4. 37.
Taking a second Benefice.

10. If any Parson, Vicar, &c. have one Benefice with Cure of Souls, and take another incompatible without a faculty and Dispensation, it is a just cause of Deprivation.

Dyer 133. p. 1.
Priest to marry was cause of Deprivation

3 Inst. 204.

Co. 11. 98. b.

2 H. 4. 3.

9 E. 4. 34.

20 H. 6. 36.

29 E. 3. 16.

17. q. 4. Qui curat.

11. In the time of Popery it was cause of Deprivation for a Priest to marry, but not to have two or three Concubines, as they called them, but more of this hereafter.

12. Dilapidating the Church and buildings, destroying the Woods, or alienating the Lands belonging to the Church by any Bishop, Abbot, Prior, Parson, Vicar, &c. have been held and adjudged

adjudged just causes of Deprivation; and it were very fit the Canons in this case were put in execution.

There may be a question started, what *Deprivation* shall be intended by the words, deprived *ipso facto*. *ipso facto*; whether by those words the Church shall immediately become void by the fact done, or not till Conviction or Sentence declaratory. The words *ipso facto* are of late time crept into Acts of Parliament as that for striking with a weapon in a Church-yard, the party shall *ipso facto* be excommunicate: and in that *per 275. b.* Case it is made a *Quere* in *Dyer*. But in *p. 48.* *Green's Case* it is resolved, that the Church in this Case shall be void without any Sentence declaratory, and that *Quere* *Co. 6. 29. b.* Avoidances by Acts of Parliament need *Cap. Quia in.* no Sentence declaratory. But in that *continentie* *verb. ipso* Case by the Canonists *requiritur Sententia declaratoria*. And note that after *Rolls 2. 282.* induction the Spiritual Court cannot de- *Y. 5.* prive for any Error in his Institution. So *Roll. 2. 305.* if a Clerk commits Homicide and hath *§ 3.* his Clergy, he shall not afterwards be deprived for this offence. And a man may be deprived by reason of degradation.

I must confess, in this Chapter I may seem to transgress upon the Canonists and Civilians as well as in some other, but I have gone no further upon this Subject than what I have met with in our own Books, and I must agree that the Ecclesiastical

fiastical Courts have the sole Jurisdiction in all causes of Deprivation, Depositions, Resignations, &c. And yet the Judges of the Common Law have power to correct their proceedings, if they shall proceed against the Rules of the Common Law, which is the reason we meet with these things in our Books, and it may be some advantage to the *Civilians* to know how far the Common Law approves of their proceedings: there is by the Canon Law divers other causes of Deprivation, but it is out of my province, and would be too long for this discourse to reckon them all up. And having said what I have to say upon this Subject, I shall proceed next to shew, what Leases Parsons, Vicars, and other Ecclesiasticks may make at this day of the Glebes, Tithes, Farms, &c. and within the danger of what Statutes they may fall.

C H A P. X.

The tenth Chapter shews, what Leases Parsons, Vicars and other Ecclesiastical Persons may make of their Glebe, Tithes, Farms, &c. and what Farms they may take, and within the danger of what Statutes they may fall.

HAVING undertaken this work chiefly *what Leases* in favour of the Parsons and Vi- *Clergy-men* cars, I designed to have medled with no *may make.* other Orders of the Church but those only; but having in many other things been enforced to entermingle the concerns of other Orders with those of the Parsons and Vicars, I shall beg the Readers pardon, that in this Chapter, where I am to treat of the Leases which may be made by Parsons and Vicars, I likewise take in all other Orders of the Church with the Colledges; the Learning concerning Leases being of use and necessary for all people to know, and which I shall in this Chapter put into as good a method as the subject matter will permit.

And because the Learning of these Leases will depend upon several Statutes, it will not be amiss first to examin what Leases

Leases or Alienations the several persons we have to do with in this Chapter might have made at Common Law before the Statutes, and then to consider where, or in what manner, the several Statutes have enlarged, abridged or restrained their power at Common Law.

At Common Law.

1 Inst. 45. a. v.

And first, at the Common Law no Bishop, Abbot, Prior, Dean, Prebend, or other single Corporation, could make any Alienation or Lease to bind their Successors without the Conformation of their Chapter, Covent, &c.

The enabling Act of 32 H. 8. cap. 28.

The first Statute that made any alteration in these cases was the Stat. of 32 H. 8. which is commonly called the enabling Statute, whereby it is enacted,

That all Leases then after to be made of any Mannors, Lands, Tenements or Hereditaments, by writing under hand and Seal for term of years, or for term of life, by any Parson or Parsons of the full age of 21 years, having any estate of Inheritance either in Fee-simple, or Fee-tail, in their own rights, or in the rights of their Churches, &c. shall be good and effectual in the Law against the Lessors, their Wives, Heirs and Successors.

Provided that that Act shall not extend to any Lease of any Mannors, &c. Where any old Lease should be in being unless the same expire, be surrendered or ended within one year after the making of such new Lease,

nor shall extend to any Grant to be made of any Reversion of any Mannors, &c. nor to any Lease of any Mannors, &c. which have not most commonly been letten 21 Farm or occupied by the Farmers thereof by the space of twenty years next before such Lease thereof made, nor to any Lease to be made without impeachment of waste, or to any Lease to be made above the number of three Lives, or 21 years at the most from the day of the making thereof, and that upon the making of every such Lease there be reserved yearly during the said Lease due and payable to the said Lessors, their Heirs and Successors, to whom the reversion shall appertain &c. so much yearly Farm or Rent, or more, as hath most accustomedly been yielded and paid for the said mannors, &c. so to be letten within twenty years next before the Lease thereof made, &c.

Provided this Act should not extend to give any Liberty or power to any Parson, Vicar, &c. to make any Lease or Grant of any of their Messuages, Lands, Tithes, &c. or in any other manner then they should or might have done before the making of the said Act.

So now, where before the making of this Act no Archbishop, Bishop, Archdeacon, Dean or Prebend could have made any Lease to have bound his Successors without the confirmation and consent of their Chapters, &c. as aforesaid:

Now

*What qualities
such Leases
must have.*

*Must be in
writing inden-
ted.*

*Must begin
from the ma-
king or day of
making.*

*Old Lease must
expire within
a year.*

Co. 5. 2. b.

*Must not be a
double Lease.*

*Of what things
such Lease may
be.*

Co. 5. 3. a.

More. 778.

Talentine

vers. Denton.

H. 2 Jac. B.R.

*Of Lands usu-
ally letten.*

Now by this Act they are enabled to make Leases for three Lives or one or twenty years without any confirmation at all with these qualifications:

1. Such Lease must be made by writing Indented, and not by parol or deed poll.

2. It must be made to begin from the making or day of the making of such Lease.

3. If there be any old Lease in being at the time of the making of such Lease it must expire, be surrendered or ended within a year after the making of such new Lease, and such surrender must be absolute and not upon condition.

4. There must not be a double Lease in being at one and the same time, one for years, and the other for Lives.

5. Such Lease must be of Lands manurable or corporeal, which are necessary to be letten, and out of which a Rent may be reserved, and not of things that lie merely in Grant, as Fairs, Markets, Tithes, Tolls, Franchises, Advowsons, &c.

6. Such Lease must be of Lands, which have most commonly been letten to Farm; or occupied by the Farmer thereof for the more part of twenty years before the making of such Lease. So if they have been so let for eleven years within the twenty years next before the making of the new Lease, it suffices: and a setting to Farm by Copy

of Court-Roll is a sufficient letting to Co. 6. 37. b. 1
Farm within this Statute to enable the
making of such new Lease.

7. There must be reserved upon every *The accustomed*
such Lease, and payable during the conti- *Rent must be*
nuance thereof to the Lessor, his Succel- *reserved.*
fors, &c. so much Farm or Rent as hath
most accustomedly been yielded and paid
for the Land so demised within 20 years
next before such Lease made: so that it
sufficeth, if the yearly Rent or Farm be re-
served, though Heriots and other casual
Services be omitted; so if a greater Rent
than formerly be reserved, it sufficeth. Co. 6. 37. b. 1
But if the Lessor reserve a less Rent than
the ancient during his life and after the *Ibid.*
full rent; yet it is nought, because it must *Co. 5. 6. a. 2*
be reserved during the whole term: So
if Lands usually letten be demised with
any other Lands, &c. though a Rent be
reserved that exceeds the value of those *Co. 5. 5. b. 1*
Lands and the old Rent; yet such Lease *Vide Co. 8.*
is not good against the Successor within *70. b. 1. &c.*
this Law. But if the Rent were former- *What Reservati-*
ly reserved to be paid at four several days, *ons are good.*
and by the new Lease be reserved to be
paid all at one, so the whole Rent be re-
served yearly, it is well enough. *Co. 5. 37. b.*

If a Bishop, &c. have two distinct *Trin 26 Car.*
Mannors that have anciently been demi- *1. C. B.*
sed together, and one entire Rent reser- *Thredneedle*
ved for both Mannors, and these being *vers. Linam.*
out of Lease the Bishop, &c. may demise
them

H. 27 Car. 2.
In B. R.

them severally, reserving several Rents amounting to the whole ratably; and these have been adjudged lately in the Common Pleas to be good, and affirmed in Error in the Kings Bench, and by the same reason, if a Termor for life should Lease part for years, and then surrender and accept a new Lease, tending the Ancient Rent, it would be a good Lease, *ten men inde quere*, for of that part leased by the Termor, there would be two Leases on foot together; but if the new Lease were only of the Lands not demised by the Termor, then it seems good.

Such Lease must not be without Impeachment of waste.

8. Lastly, such Lease must not be without impeachment of waste, of a Lease to one for life, remainder to another for life, remainder to a third for life is not good against the Successor, though but for three Lives, because the remainders make the present Tenants disposable for waste for the time.

Parsons and Vicars excepted.

But Parsons and Vicars being excepted in this enabling Law are left as they were at the Common Law; so that they could make no Lease to bind the Successor without the confirmation of the Bishop and Patron, till the *Stat. of 13 Eliz.* which we shall speak of hereafter.

Co. 8. 70. b. Lease for years determinable upon Lives.

And note, that it hath been held, that a Lease for ninety nine years, if one, two or three Lives so long live, hath been held good within this Statute.

But

But this Act, as appears by what hath been said, conferred a new power upon single Corporations; but did not in any thing restrain their ancient power in making long Leases and Alienations of their very Scites, Demesnes, &c. with confirmations as aforesaid, which was a great prejudice to the Church in general, a means of Dilapidations, and a great hindrance of hospitality: and therefore,

In the first year of Queen Eliz. it was enacted, That all Gifts, Grants, Feoffments, 1 Eliz. c. 19: More 207. Bishops restrained. Fines, and other Conveyances and Estates from the first day of that present Parliament to be had, made, done or suffered by any Archbishop or Bishop of any Honours, Castles, Mannors, Lands, Tenements or other Hereditaments, being part of the possessions of his Archbishoprick or Bishoprick, or united, appertaining or belonging to any the same Archbishopricks or Bishopricks, to any Person or Persons, bodies politique or incorporate (other than the Queens Majesty, her Heirs and Successors) whereby any Estate or Estates should or might pass from the said Archbishopps or Bishops or any of them, other than for the term of 21 years or three Lives from any such time as any such Lease, Grant or Assurance shall begin, and whereupon the old accustomed yearly Rent or more shall be reserved and payable yearly during the said term of twenty one years or three Lives, shall be utterly void and of no effect to all
 I intents,

intents, constructions and purposes, any Law custome or usage to the contrary thereof in any wise notwithstanding.

1 Jacobi c. 3.

Note, the exception, which gives or rather reserves the power to grant, &c. to the Queen, &c. was made void by a Statute made 1 Jac.

Leases in other Forms not void but voidable.

Smalwood and Sale vers.

le Everst.

Lich. & alios,

P. 31 El. ro. 21.

65. Co. 3. 59.

1 Inst. 45. a.

Cro. Jac. 95.

And note also that though this Statute enacts, that all Leases made in any other form shall be void and of none effect to all intents and purposes; yet it has been adjudged, that it is only to be intended as against the successors, and that Leases made in other forms shall be good notwithstanding against the party himself that makes them and may be affirmed by the Successor by the receipt of the Rent reserved thereupon.

1 Eliz. A private Act.

Co. 4. 76.

Co. 5. 2. b. 1.

Cro. El. 874.

More 253.

And note, this is a private Act of Parliament, that must in all cases be pleaded, and cannot be given in evidence.

And note also, that though this Statute do not restrain demising of any Lands not formerly demised, yet it does it by implication; for the accustomable Rent must be reserved, and unless accustomable let, there cannot be an accustomable Rent; and Leases within this Statute must have all the restrictions in that of 32 H. 8. before mentioned.

Of what things such Leases may be made.

Co. 5. 3. a.

And it must be of things manurable, as hath been said, out of which a Rent may be reserved: but some are of opinion that

that Tithes or things not manurable may be demised for twenty one years, because an Action of debt will lie upon the Contract: and so it was adjudged, as a learned Serjeant at Law informed me, in the case of the Precentor of *Pauls* about 17 *Jac.* and that the Successor shall have an Action of debt upon this Contract, and is good within the *Stat. of 32 H. 1. cap. 28.* and I have seen a Report of a Case in the 20 *Jac.* in the Common Pleas, that it was so adjudged; and see *Leys Rep. 76.* That *Yelverton, Williams* and *Tanfield* were of the same opinion that it was good for years.

Upon this Statute and the former it hath been held, that Archbishops and Bishops may with confirmation of the Dean and Chapter make concurrent Leases, that is, notwithstanding there be a Lease in being for twenty one years, they may make a new Lease of the same lands to another for twenty one years from the making thereof; and this being confirmed as aforesaid shall bind the Successor, the other things being observed in it; But *Sir Edward Coke* excepts the concurrent Leases, as to those other things.

And *Sir Edward Coke* is of opinion, that like concurrent Leases may be made by Deans, Prebends, &c. with confirmation: but some learned men are not satisfied concerning concurrent Leases, because by

More 253.
Cro. Eliz. 141.

these concurrent Leases the Successor loses his remedy for his Rent by distress during the former term, and the Tenant may be insolvent as to an Action of debt; But a concurrent Lease for Lives is not good, because upon such Lease the Lessor would have no remedy for his Rent.

13 El. cap. 10.
The restrictive Law against Leases of Deans, Prebends &c.

The next restrictive Law is that of 13 Eliz. whereby it is enacted, *That from thenceforth all Leases, Gifts, Grants, Feoffments, Conveyances or Estates to be made had, done or suffered by the Masters and Fellows of any Colledge, Dean and Chapter of any Cathedral or Collegiate Church, Master or Gardian of any Hospital, Parson, Vicar, or any other having a Spiritual or Ecclesiastical Living, or any Houses, Lands, Tithes, Tenements or other Hereditaments, being any part of the possessions of any such Colledge, &c. or any wise appertaining or belonging to the same or any of them, to any person or persons bodies, &c. (other than for the term of twenty one years or three Lives, from the time as any such Lease or Grant shall be made or granted, whereupon the accustomed yearly Rent or more shall be reserved and payable during the said term) shall be utterly void, &c.*

Co. 5. 14. b.

The penning of this Act, and that of 1 Eliz. before-mentioned being in effect the same in substance, the construction is the same in effect; but in this Act there was no saving of Grants to the King, and there-

therefore this Act being for the publick good had restrained other Grants to him not warranted by this Stat. though 1 Jac. cap. 3. had never been made.

And here note, that as the Parsons and Vicars had not their power any wise enlarged by the Stat. of 32 H. 8. So they had no restriction upon them till this act; but from henceforth they are restrained from making any Lease or Grants other than for twenty one years or three Lives with the qualifications abovementioned in the Statutes, and such Leases must be confirmed by the Patron and Ordinary, because excepted in the enabling Statute of 32 H. 8. before.

And whereas after the making of this Statute, Heads of Colledges, Deans, Prebends, &c. might have made concurrent Leases, as well as Bishops might; there is a Proviso in the Statute of 18 Eliz.

That all Leases then after to be made by any the aforesaid Ecclesiastical, Spiritual or Collegiate Persons, or others of any of their Ecclesiastical, &c. Lands, &c. whereof before the for any former Lease for years is in being, and not expired, surrendered or ended within three years next after the making of any such new Lease, should be utterly void, frustrate and of none effect, any Law, &c.

By this Proviso, it should seem, the Parliament was of opinion, that concurrent Leases might be made, but has by this Pro-

viso so restrained them, that they cannot be made but within three years before the Determination of the former.

Bishops not in this Act,

But Bishops are conceived not to be comprehended within this Proviso, for though the words are general enough, yet the particulars mentioned before the general words being of an Inferior rank, the general words cannot draw in the more worthy.

Which Bonds and Covenants shall be void,

And there is a Provision in this Act of 18 Eliz. That all Bonds and Covenants then after made for the making or renewing of any Lease contrary to the intent of that Statute or of the Statute of 13 El. c. 10. should be utterly void.

13 Eliz. c. 20. Leases of Parsons to be void by Non Residence.

In the 13th year of Queen Elizabeth there is an Act of Parliament made, whereby it is enacted, That no Lease made after the 15th day of May following of any Benefice or Ecclesiastical Promotion with Cure of any part thereof, and not being impropriated, should endure any longer, then while the Lessor should be ordinarily resident and serving the Cure of such Benefice without absence above fourscore days in any one year; but that every such Lease [so soon as it or any part thereof should come to any possession above forbidden or] immediately upon such absence shall cease and be void, and the Incumbent so offending shall, &c. lose one years profit of his said Benefice to be distributed by the

These words within the [] are repealed by 14 El. c. 11.

the Ordinary to the Poor of the Parish.

And by the same Statute it is further charging Par- enacted, That all charging of such Bene- sonages void. fices with Cure then after with any pension, or with any profit out of the same to be yielded or taken, other then Rents reserved upon Leases, should be void.

But where any Parson should be qualifi- where a Parson ed to have two Livings, he may demise may demise and the one of them, where he is not ordinarily be non-resident. resident, to his Curate only, that shall there serve the Cure. And such Lease shall endure no longer than during such Curates residence without absence above forty days in any one year.

And by 14 Eliz. it is enacted, That all 14 El. cap. 11. Leases, Bonds, Promises and Covenants of Leases, Bonds, and concerning Benefices and Ecclesiastical and Covenants to be void. Livings with cure to be made by any Curate shall be of no other or better force, validity or continuance, than if the same had been made by the beneficed person himself, that shall demise the same to such Curate,

And by the same Statute it is enacted, Houses Incorporated. That the restrictive Statute of 13 El. c. 10. rations, &c. before, shall not extend to any Grant, As- how to be leased. surance or Lease of any houses belonging to any the persons, &c. (in the said Stat. of 13.) nor to any grounds to any such houses appertaining, &c. in any City, Burrough Town Corporate or Market Town, or the Suburbs of any of them; but that all such houses and grounds may be granted, demi-

sed and assured, as they might have been before the making of the said Act, so always as such house be not the Capital, or dwelling house used for the Habitation of the Parsons, &c. nor have above ten Acres to the same.

Not to lease in reversion.

Provided, That no Lease be made by virtue of this Act in reversion, nor without reserving the accustomed yearly Rent at least, nor for a longer term than for forty years at most, charging the Lessee with repairs, and no alienation in Fee, unless Lands of as good yearly value be settled, &c. in lieu thereof.

Bonds, Contracts, Covenants, Promises, where to be void.

There is likewise another Proviso in the act, that all Bonds, Contracts, Promises and Covenants to be made for the suffering or permitting any person to enjoy any Benefice or Ecclesiastical Promotion with Cure, or to take the profits or fruits thereof, other than such Bonds and Covenants as shall be made for assurance of any Lease heretofore made, shall be of no other force than Leases made by the same person.

18 Eliz. c. 11.

And by another Statute made in the 18th year of the same Queen Eliz. It is enacted, That after complaint made to the Ordinary, and Sentence given upon any offence committed by the Incumbent against the Statute of 13 Eliz. cap. 20. whereby he shall or ought to lose a years profit of his Benefice, &c. That then the Ordinary within two months after such Sentence and request

quest made by the Churchwardens of the Parish, where, &c. or one of them shall grant the Sequestration of such profits to such Inhabitant or Inhabitants within the same Parish, &c. as to him shall seem meet, &c.

And that upon default of the Ordinary, Every Parishioner shall be lawful for every Parishioner, one may take &c. to retain, &c. his Tithes, and for advantage. the Churchwardens to enter upon the Glebe-land Rents and duties of every such Benefice to be employed to the use of the poor, &c. untill such time as Sequestration shall be committed, by the Ordinary; and then the Churchwardens and Parishioners to accompt to such to whom the Sequestration shall be committed, who is to employ the whole profits according to the act, upon pain to forfeit the double value of the profits withholden, to be recovered in the Ecclesiastical Court by the poor of the Parish.

Having thus for the Readers satisfaction given him an Abstract of all the Statutes concerning the Leases of Ecclesiasticks of all kinds, I shall briefly sum them all up, and proceed to take a view of such other Statutes as the Parsons, Vicars, &c. are in any manner in danger of.

Upon the whole matter it appears, ^{what Leases may be made by} that Archbishops and Bishops may make ^{Bishops and} Leases for twenty one yers, or for one, ^{Archbishops.} two or three Lives, with the qualificati-
ons

ons before-mentioned without any Confirmations at all: and they may make concurrent Leases for twenty one years upon Leases for twenty one years from the making with confirmation of the Dean and Chapter with such qualification as is aforesaid, though there be above three years in being of the old Lease at the time of the making the new, and where the Bishop has two Chapters, there the concurrent Lease must be confirmed by both Chapters; unless it be as it was in the Bishop of *Waterford's* Case, which was thus: The Bishop of *Waterford* had long ago the Bishoprick of *Lismore*, and the Chapter united to that of *Waterford*; And in all Grants made of the Lands belonging to *Lismore* that Chapter only confirmed, and all Grants made of the

Co. 12 71. a. Lands anciently belonging to the Bishoprick of *Waterford* the Chapter of *Waterford* only confirmed; and because the Union was not extant, all the Judges held the confirmation of the one in the manner aforesaid was good, for it shall be intended, that it was so provided for upon the consolidation; but otherwise all the Judges held, that both Chapters ought to have confirmed.

Dyer 282.

p. 26.

Ibid.

But if a Bishop had two Chapters, and one of them surrenders, is suspended or dissolved, the confirmation of the other suffices.

There

There is a Case in Mr. Justice Harpur's Reports, where the Case is put, That a Bishop made a Lease dated 2 *die Maii* confirmed the third day, and sealed the fourth day of May, and held a good Lease and well confirmed.

But a Confirmation by the Dean and Chapter after the death of the Bishop comes too late by *Cotlyne, Suthcoate* and *Windham* against *Wray*.

But if a Bishop make several concurrent Leases, and the latter is first confirmed, and after the first is confirmed; in this Case the first Lease shall be preferred, because nothing passes by the Confirmation in point of Interest but a mere Consent.

If a Bishop make a Grant to the King, which is confirmed by the Dean and Chapter before the Grant is inrolled, this is well enough.

But note, that a Bishop cannot make a concurrent Lease for life, though upon a precedent Lease for years; nor a concurrent Lease for years, where there is a Lease for life in being.

Deans, Prebendaries, Heads of Colleges, Masters of Hospitals, and other Ecclesiastical Persons mentioned in the Stat. of *Eliz. c. 10.* may make Leases for years, or any lesser number of years, or for one, two or three Lives in possession, according to the qualifications above-

M. 14 and 15
Eliz.

Harpur Rep.
M. 14 and 15
Eliz.

T. 6. El. More
66.

T. 8. Jac. Scac
Sir Edw. Di-
mock's Case.
Rolls 1. 477.
h. 7.

Crook. El. 141.
More 253.

Leases by
Deans, Pre-
bends, Colleges,
&c.

mentioned; and they may make concurrent Leases as Bishops may with confirmations; but they must be within three years of the determination of the former term by expiration, surrender or otherwise: so that in this point the Bishop has the advantage.

And though the enabling Stat. of 31 H. 8. gives power to make Leases to hold from the making, or day of the making; yet the restrictive Stat. of 13 Eliz. makes them void, if they be not made to hold from the making, and not from the day of the making; *quod nota*: But the Leases of Bishops and Archbishops are not within that Act, but the Act of 1550 of the Queen, is, that all Leases should be void, other than for 21 years or 3 Lives from the time of the commencement. Note the different pennings.

Concurrent Leases, and who is to confirm Leases.

Rolls 1. 481.

p. q. r.

Dyer 221. p.

13. 357. p. 42.

Plow. 528.

Dyer 61. p. 3.

Co. 5. 81. a.

Who are to confirm Leases.

And forasmuch as all concurrent Leases of any Bishop, Dean, Prebend and Arch-Deacon are to be confirmed, it is convenient to let the Reader know who is to confirm the same; therefore for the Readers satisfaction he is to know that the Leases of Bishops and Archbishops are to be confirmed by the Dean and Chapter, or Deans and Chapters, if there be several Chapters: Grants made by a Prebend are to be confirmed by the Bishop, Dean and Chapter: the Grants made by Deans are to be confirmed

confirmed

confirmed by the Bishop and Chapter: the Grants made by the Archdeacon, by the Bishop, Dean and Chapter: the Grants of Parsons and Vicars, with their Patrons and Ordinaries: and Grants by the Incumbent of a Donative, by the Patron alone.

But if a Parson make a Lease, which is confirmed by the Bishop only, who is Patron, without the Dean and Chapter, which ought to have joyned; it shall bind the Successor during the Lives of the Bishop and Incumbent, although the Bishop, be translated.

But Grants by Parsons, Vicars, Prebends, &c. before induction or installation, &c. although confirmed, are not binding to the Successor.

But if the King be Patron of a Prebend, then the King and Dean and Chapter, and not the Bishop ought to confirm the Grant.

A Lease made by a Prebendary Parson, Vicar, &c. may be confirmed for part of the term, if it be for years, that is, confirm the Land to the Lessee for so many years of the term; but if the Term be confirmed for part of the Term, it were absurd and repugnant, and should be good for the whole term: and as such Lease may be confirmed for part of the term, so it may be for part of the Land.

If

Co. 5. 81. a.
Dyer 52. a. b.
Cro. El. 472.

Rolls i. 476.
f. 1, 2.

Rolls i. 479.
n. 1.

Rolls i. 480.
n. 2, 3.

Rolls i. 480.
n. 4.

Cro. Car. 582.

Rolls i. 480.
n. 5.

Cro. El. 430.

Co. 5. 15. 2.

If a Parson, &c. make a Grant, which is confirmed by the Patron and Ordinary, and after be deprived; yet the Grant is good. A Husband seized in the right of his Wife of an Advowson, the Parson makes a Lease warranted by the Statute before-mentioned, and the Bishop or Husband confirm it; this shall not bind the right of the Wife but during the Husband's life, but that the Successor at his death will avoid it, that comes in by the presentation of the Wife. So if a Tenant in tail being Patron confirm the Grant of the Parson with the Bishop, this shall not bind the Incumbent of the Church in tail.

If an Usurper present, and confirm the Lease of his Incumbent with the Bishop, and after is removed by *quare Impedit*, &c. this shall not bind the Clerk of the true Patron.

If the true Patron grant the next avoidance, and then confirm the Grant of the Parson, who after dies; the Incumbent presented by him that had the next avoidance shall avoid the Lease, and his re-entry upon the Lessee avoids the Lease for ever.

If the Parson make a Lease to the Patron, which is confirmed by the Bishop, this is not good; but if the Patron grants it over, it amounts to a confirmation.

If a Prebend, Parson or Vicar make a Lease, and the Bishop being Patron confirms it without the Dean and Chapter; yet this shall bind the Bishop and all the Prebends, Parsons, &c. which he shall Collate.

If a Parson had made a Lease for above 21 years before the Statutes of 13 and 14 Eliz. which had been confirmed after, this had been good, and not within the restriction of those Laws.

If a Parson Leases where there are two Patrons, both ought to confirm as they should seem. Leon 233. Quære.

If the Patron and a succeeding Bishop confirm the Lease of the Parson, it is good enough. Cro. Car. 38.

A Prebend made a Lease, reciting that it was with the consent of the Bishop, who signed and sealed the Lease to the Lessee, but was no party to the Deed, *quare* if good. Dyer 106. P. 21. Quære.

And having said thus much of Confirmations, let us see, what Leases a Parson or Vicar may make at this day, considering all the before-mentioned Statutes.

And first, it is to be observed, that at and by the Common Law a Parson or Vicar might have granted or charged his Glebe in Fee-simple with the confirmation of the Patron and Bishop; but being excepted out of the enabling Statute of 32 H. 8. he could never make any Lease *Leases by Parsons and Vicars.* 32 H. 8. c. 28.

13 El. cap. 10.

Lease or Grant to bind their Successors, without such confirmation; then by the Statute of 13 Eliz. *Parsons and Vicars are restrained: So that they cannot grant but for 21 years or three Lives from the making of such Lease, and not from the day of the making, as is before observed; and these Leases and Grants must be with the confirmation of the Patron and Ordinary, with all the qualifications expressed in the beginning of this Chapter.*

And it should seem, they may make concurrent Leases, as Deans, Prebends, &c. may do within three years of the end of the former Leases.

13 El. cap. 20.

It has been a question, whether a Parson or Vicar at this day can make any Lease at all to bind his Successor: for by the Statute of 13 Eliz. cap. 20. it is enacted, *That Leases of Parsons, Vicars, &c. that have Cure of Souls shall endure no longer, than they shall be ordinarily resident and serve the Cure; and that if such Parson, &c. shall be absent from their Cure above 80 days in one year, that then such Lease shall cease and be void.* Now when a Parson dies, and 80 days incurr, and this being a Law for the advancement of Religion and Hospitality, to avoid Dilapidations, it shall have an equitable construction for the preferring of these ends: therefore some have held, that the death of the Parson, Vicar, &c. after 80 days have

have incurred from their deaths, shall make all their Leases and Grants void, though never so sufficiently confirmed; and rely very much upon the preamble of the Statute, which begins, *That the Livings appointed for Ecclesiastical Ministers* *Parsons Leases* *may not by corrupt and indirect dealings which is con-* *be transferred to other uses, Be it enacted, firm'd, and* *dye.*

But by these Leases it is apparent the profits are converted to other uses, &c. But others have held the contrary Opinion, because such absence is not voluntary but by the Act of God, and regularly these cannot be said absent that are not in esse: and though Crook report *Mott and Hale's Case* adjudged in point that their Leases are void by death; Yet *More* reporting the same *More 170.* *Cro. El. 123.* *Case* says, As to the matter in Law the Judges were divided two against two, and that the Judgment was given upon a misrecital of the Statute. And this point as I am Informed, came lately in Bayley vers. Munnes. T. 24. question in the King's Bench, and was Car. 2. B. R. adjudged that death doth not avoid such Leases. *Ideo quere inde.*

There is a *quere* in *Dyer*, whether such Leases shall be void upon 80 days absence *Quere.* *Dyer 372. p. 11.* *ab initio*, or but from the time of absence *ipson Parson's Lease shall be void by non-residence.* by 80 days; but it seems to me with some clearness that it shall only be void from 80 days absence, and not *ab initio*. For first, the words of the Statute are
 K that

Quere.

*Whether void
against the
Parson himself.
Co. 3. 59. b.
60. a.*

*And there has
been some late
opinions as I
have heard
against the
resolution in
Lincoln Col.
Case.*

Dyer 372.

P. 11.

Quere.

Dobbins vers.

Gerrad p. 39.

El. B. R.

that such Lease shall indure no longer than the Lessor shall be ordinarily resident, &c. So that till then it is to indure, and the Statute closes, that upon such absence the term shall cease, which it could not do if it had not a being before; for a thing cannot cease to be, that has not been.

But another *quere* may be started in this Case upon the reason in *Lincoln Colledg Case*, whether such Lease shall be void against the present Incumbent that made it, or only against his Successor; but it seems to me with some clearness that the intent of the makers of this Act was to make such Lease void against the Lessor himself upon such absence: for, as before is said, the Statute says, it shall indure no longer, which is a term of limitation, and that immediately upon such absence the Lease shall cease and be void, and it cannot cease immediately upon the absence, and yet be good during the life of the Incumbent. But in the Case of *Revel vers. Hart. H. 43. Eliz. B. R.* the Court held the contrary, as my Report says. *Ideo quere.*

If any Parson, Vicar, &c. be suspended, inhibited or disabled to serve the Cure by the space of 80 days in a Year, this shall not make such Lease void, for the not serving the Cure must be voluntary: And it has been held, that if a Parson be resident and do not serve the Cure, or

serve

serve the Cure and be absent by 80 days, that in both these Cases it will make such Lease void.

Though this Statute upon 80 days absence makes such Lease void made by Parsons and Vicars, and says nothing of confirmation; yet a confirmation of the Parson and Ordinary in this Case seems not to amend the matter, for if the Lease be void, the confirmation is of no avail.

At the Common Law, if a Parson, Vicar, &c. had made a Lease and resigned, the next Incumbent might have entered immediately upon the Lessee; but by a Statute made in the 28th Year of H. 8. *the Lessee may hold on his term for six years, if the Parson that made his Lease so long live, and the term were made for so long time; but upon such Lease there must be so much Rent reserved within forty shillings as such Benefice is valued at in the Kings Books.*

Stat. 28 H. 8.

cap. 11.

Parson Leases
and Resigns.

And by the same Statute, if a Parson make a Lease and resigns and dies, the Tenant shall hold out his Lease for the Year that was commenced at the time of his death if the Term were to have had so long continuance, if the Person had not died: but this seems only of such Lands as are plowed, for the succeeding Parson is to have the Parsonage, House and Glebe which is not sowed within a month after

he is inducted, allowing a reasonable deduction for the Rent reserved upon such Lease.

But in both Cases the Lessee must pay the reserved Rent to the succeeding Incumbent, who is enabled to sue or distress for the same.

And such Lease must be in writing under hand and seal and not by parol.

13 El. cap. 20. But it should seem the Stat. of 13 El. before has made this Law of no effect.

18 El. c. 11. And having now done with these Statutes, as to Leases, let us next consider what Bonds, Covenants, Promises, &c. are void within the Statute of 18 El. before-mentioned.

Hob. 269.

Covenants,
Bonds, which
— good.

Covenants, Bonds, &c. made for the enjoying houses within Cities, Corporations, &c. are not void within this Law; for this Law makes no Bonds, Covenants, &c. void, which are not against the intent of this Statute, and the Statute of 13 El. cap. 10. but Leases of Houses and Lands in Cities, &c. by the Statute of 14 El. cap. 11. are exempted out 13 El. cap. 10. and are not within the Statute of 18 El. before.

More 641.

A Parson made a Bond to resign upon request, and afterwards a Lease to his Patron of part of the Glebe for twenty years: in an Action brought upon this bond, the Incumbent pleaded the Statute of 18 Eliz. and averred that this Bond

was made to secure this Lease; and to compel the Incumbent to reside, and adjudged a good Plea, and an apt averment.

A Parson made a Lease, and in the Lease covenanted not to be absent by the space of 80 days in any one year, and gave Bond for the performance, and after became non-resident for 80 days, and resolved that the Bonds and Covenants were both void.

A Parson made a Lease, and covenanted neither to do or suffer to be done any matter, whereby the Lease should become void, and after became non-resident by the space of 80 days in a year, and this was held a good Covenant, and a Covenant that the Parson should be resident was held not to be against this Law by *Popham, Tanfield, and Clench* against *Williams*. *Ideo quere.*

Olivers Case
M.4. Jac. B.R.

And having now done with Leases to be made by Ecclesiasticks of every kind, and having therein exceeded my bounds beyond Parsons and Vicars to all other Ecclesiasticks, since the Leases of Colleges and Hospitals come in my way, I will give the Reader what satisfaction I can concerning them: And as to them,

Quere:
Leases of Colleges, Hospitals.

It is to be observed, that they are not comprehended in the enabling Statute of 32 H. 8. nor in any other Statute that I find till the restrictive Statute of 13 El.

13 El. cap. 14

K 3

whereby

whereby amongst the rest, the Masters and Fellows of Colledges, and the Masters and Gardians of Hospitals are disabled to make any Grants or Conveyances of any of their possessions, other than for twenty one years, or three Lives from the making of such Lease, and not from the day of the date, or from the date, as has been said: and this must be of Land usually demised, and the accustomed Rent, or more, must be reserved with all the other qualifications mentioned in the beginning of this Chapter.

Stat. 18 Eliz.
cap. 6.

But there is a restriction upon Colledges by the Statute of 18 Eliz. that upon all Colledge Leases a third part of the Antient Rent shall be reserved in Wheat and Mault, after the rate of 6 s. and 8 d. a Quarter Wheat, and 5 s. a Quarter Mault, to be delivered at the Colledges; and in default of the delivery to pay for the Wheat and Barley, after the rate the best Wheat and Mault shall be sold the next Market day before the Rent should have been paid, and for default of such reservation the Lease to be void, and the Markets that are to set the prices are, Oxford for Oxford, Cambridge for Cambridge, Windsor for Eaton, Winchester for Winchester.

18 El. c. 11.

And by the Stat. of 18 El. they are restrained to make any concurrent Leases within three years of the end of the former Terms that are in being.

I shall now shew the Reader, what things are demisable within these several Statutes, and what Reservations are good, and in what case the Acceptance of Rent by the Successor will make a Lease good, that was voidable within these Laws, and the several qualifications mentioned in the beginning of this Chapter.

One *Small* being possessed of the manor of *Paddington* by a Lease from a Bishop for a term of years, the Bishop made a Lease to another for three Lives, and before Livery the Tenant surrendered his former Term, and it was held that the Surrender was made in due time, and the second Lease good.

A Prebend had usually been leased (excepting the Crab-trees) and the Prebendary made a new Lease without excepting the Crab-trees, reserving the ancient Rent, with other due circumstances, and this Lease was held void against the Successor by reason of the adding of the Crab-trees.

It hath been adjudged, That a Bishop, Dean, &c. cannot grant the next avoidance of an Advowson, nor any Rent-charge out of the possessions of the Church, but the same is void within the restrictive Acts before-mentioned, though these cannot be said any of the possessions of their Churches.

What Leases shall be good.

Small's Case.

M. 4. Jac. B. R.

Former in being.

ex-Cro. Jac. 458.

3 Bulst. 290.

More in the

new Leases than the old.

Co. 5. 15. a. d.

Next avoidance not demisable.

Co. 10. 60. b. d.

Davenant verf.
Evel 13 Salis-
bury. M. 23.
Car. 2. B. R.

And it hath been held that where a Bishop demised a Rectory for lives, and covenanted to discharge, save harmless, and indemnified, the Lessee, &c. from all Pensions, Procurations, Subsidies, and from all other payments of any Sum of Money Demands and Duties whatsoever; ordinary or extraordinary, which shall be due and issuing out of the Premises, that this Covenant would not bind the Successor, unless it had been in the ancient Leases: and the Lord Chief Justice Hale was of opinion, that such Covenant, though it had been in former Leases should not bind the Successor for the Royal Aid, or any new charge by Act of Parliament.

Co. 10. 61. b.

But a Bishop may grant an antient Office with the antient Fee (if it be a necessary Office for the life of the Officer.) But the Bishops cannot grant such Office to two or in reversion. And a Bishop cannot grant an Annuity, *pro consilio impenso & impendendo*, to bind his Successor though it be confirmed by the Dean and Chapter.

Co. 10. 61. b.

And it hath been resolved that a Bishop of late erection may grant an Office of necessity to one in possession for life with a reasonable Fee.

But these grants must all be confirmed by the Dean and Chapter, because they are not good within the *Stat.* of 32 H. 8.

Co. 10. 62. a.
Cro. Car. 555.

But where Offices have anciently been granted

granted in Reversion, they may still be granted in Reversion with Confirmation.

If a Bishop grant an ancient Office with the ancient Fee and more, and the grant be entire, as where the ancient Fee was 5 Marks, and the new 5 *l.* 'tis void for all. But if it be several, as 5 Marks, and Pasturage for two Horses, it is good for the ancient fee, and void for the other. *per Hutton and Telverton, vers. Crook and Harvey.*

If a Copyhold Escheator be forfeited, the Bishop may grant it in Fee by Copy of Court-Roll, notwithstanding the Statute of 1 *Eliz.*

Evesq; Chichest. vers. Freedland. Leyes Report; 72.

Collins and Jones Case. Ley 80.

It was also resolved, that where an Arch-deacon made a Lease for three lives warranted by the Statutes before mentioned, and the Lessee granted a Rent-charge for an hundred years, which was confirmed by the Bishop, Dean and Chapter, that notwithstanding the same was void against the Successor within the Statute of 13 *Eliz. cap. 10.*

Co. 5. 15. 3. charges void.

If a Writ of Annuity should be brought against a Parson, &c. pretending the same due by Prescription, and although the Parson pray in aid of the Patron and Ordinary, and upon a Plea pleaded by them the Plaintiff obtains a Verdict and Judgment, and all this by practice and fraud to charge the Glebe, it is void against the Successor; for these Statutes being made for

Co. 5. 14. b.

19 Aff. p. 9.

for the benefit of the Church, advance of Religion and Hospitality, and to avoid Dilapidations, shall always have a favourable Construction.

*Acceptance of
Rent, where it
shall bind.*

Haley 88.

Co. 3. 5. 2.

35 H. 6. 3. & 4.

11 E. 3. Fitz.

Abbot 9.

8 H. 5. 19.

It is regularly true, that where the Wifes issue in tail, or Successor accepts the Rent after the death of the Husband, Tenant in tail, or a Predecessor upon a void Lease made by the Husband, Tenant in tail or Predecessor, that such Acceptance will not affirm the Lease: but this Rule must be understood of such a Lease as is void *ipso facto*, without entry or any other Ceremony; and therefore if a Parson, Vicar or Prebend, &c. make a Lease not warrantable by the Statutes for twenty one years, rendring of Rent, and dye, here no Acceptance of Rent by the Successor, &c. will affirm this Lease, because the same was void without Entry or other Ceremony; but if a Parson, Vicar or Prebend make a Lease not warrantable within the before-mentioned Statutes for life or lives, reserving Rent, and dye, and the Successor before entry accept the Rent; this Lease shall bind him for the time, for this being an Estate of Freehold could not be void before entry.

Dyer 219. p.

42 F. N. B.

50. c.

But if a Bishop Abbot or Prior, which have the inheritance in Fee-simple in them, make a Lease for lives or years not warranted by the Statutes before-mentioned, not being absolute void by their deaths,

death, but only voidable by the entry of the Successor, if the Successor accept the Rent before Entry, be it for lives or years, he affirms the Lease for his life.

If a Bishop make a Lease not warrant-^{Rolls 1.476. d.}
ed by the Statutes rendring Rent, and die,
and his Successor appoints his Bayliff to
collect his Rents of that Mannor, who
amongst the rest receives the Rent refer-
ved upon this Demise, and accounts to
the Bishop's Successor for it; this is a
good Acceptance, and shall bind the Bi-
shop for his time.

So if a Parson lease for life not warrant-<sup>11 E. 3. F. Ab-
bot 9.
Dyer 239. p.
42.
2 H. 4. 2. 2.</sup>
ed not confirmed, reserving Rent, if his
Successor receive Fealty of this Tenant
upon this lease, he has thereby affirmed
the lease for his time: the like it will be, if
the Successor bring an Action of waste.

But if a Bishop make a Lease of Tithes
or other things not manurable for life or
lives, rendring Rent, and dies, and his
Successor accepts this Rent, it will not
affirm the Lease. ^{Cro. Jac. 173.}

But whether such acceptance upon a
lease for years of Tithes, &c. will bind the
Successor, I must leave it a *Quere*, not
finding that point any where resolved.

Quere.

I having now held the Reader long
upon this subject, I shall now leave them
and proceed to examine, what Leases or
Farms they may with safety take or not
take.

By

Stat. 21 H. 8.
cap. 13.
Parsons, &c.
must not take
Farms.

By a Statute made in the twenty first year of King H. 8. It is amongst other things enacted, That no Spiritual Person shall in his own name, or in the name of any other, take to farm any Mannors, Lands, Tenements or Hereditaments, upon the penalty of ten pounds for every Month that he holds the same; nor by himself nor any other shall buy Cattle, Corn, Lead, Tynn, Hydes, Leather, Tallow, Fish, Wool, Wood, or any manner of Victuals or Merchandizes, to sell again for gain, upon pain to forfeit the treble value of things so bought.

Where he may.

But a Spiritual Person may buy such things for his own use, and if they do not fit him, he may sell the same again; and if where he hath not sufficient Glebe, he may take grounds for the maintenance of his Family.

Shall not farm
another's Par-
sonage, &c.

And it is further enacted by the same Statute, That no Spiritual Person beneficed with Cure of Souls shall farm the Parsonage or Vicarage of another to take any Rent or Profit out of such Farm, upon the penalty of forty shillings a week, and ten times the value of the Rent or Profit he shall take out of such Farm.

Must not keep
a Tan-house, or
Brew-house.

And it is further enacted by the same Statute, That no spiritual Person shall have or keep by himself, or any other, any Tan-house, or Brew-house, other than for his own Family, upon pain to forfeit ten pounds per menssem.

Al

All which Penalties are given to the Penalties bond King and Informer, to be recovered in any of to be recovered, his Majesties Courts of Record at Westminster by Action of Debt, Bill, Plaint or Information, wherein no offaine, protection, or wagger of Law is to be admitted, &c. M. 4 Cragge vers. Car. 1. Scacario, It was adjudged that a Lampley. Spiritual Person not beneficed was not with- M. 4 Car. in this Statute.

By the Stat. of 5 Eliz. there is authority 5 Eliz. cap. 5. given to the Bishop of the Diocess, Parson, Where he may Vicar or Curate of the Parish to license license the eating of flesh. any sick person to eat flesh during his sickness, and if his sickness continue above eight days after the granting of such license, then the same is to be registred in the Church-Book, &c. and that license to endure during the sickness, and no longer.

And if any Parson, Vicar or Curate Penalty if grant any License to any person or persons, needles. other than such as evidently appears to have need thereof by reason of sickness, the Parson, Vicar or Curate that granted such license shall forfeit five Marks for every such License, and the License to be void.

In the 25 year of H. 8. There was a Sta-Sheep. tute made against the excessive number of Stat. 25 H. 8. sheep, wherein there is a Proviso, that it cap. 13. might be lawful to all spiritual Persons, and every of them, to keep such and so many sheep upon their own Lands, and after such form and manner, and not otherwise, as they might have done before the making of the said Act. There

Incontinent.

There is several Acts of Parliament for punishing incontinent Priests, which though since the blessed Reformation (I do not mean the last pretended reformation, but that in the time of E. 6. and Queen *Elizabeth*) are become obsolete and useless: yet since I have promised them all the Statutes they may fall in the danger of, these are not to be omitted: but before I come to these particular Laws, I will beg the Readers pardon for giving him a short Historical account of the restriction of the Marriage of Priests, which gave the occasion of these Laws.

De Clericis
cap. 18, 19.

Bellarmino in his disputations endeavours to make the single life of Priests to be *jure divino*; but if not so, yet he goes about to prove that it has been enjoyed by Canons as high as the Apostles time: and to that purpose vouches the Canons of the Apostles (which though they may be ancient, yet no rational Man that peruses them will believe they were made by the Apostles, or very near their time) in which I must confess I find a Canon that by implication forbids Priests to Marry, but not married men to be Priests; and 'tis to this effect, *Ex his qui calibes in clorum pervenerunt, jubemus, ut Lectores tantum & cantores (si velint) nuptiis contrahant.* But if he had lookt a little back in those Canons he would have found another manner of Prohibition in these words:

Canon 25.

Canon 5.

Canons against
the Marriage
of Priests.

Episcopus

Episcopus aut Presbiter, aut Diaconus, uxorem suam prae-textu Religionis non abjicito: si abjicit, segregator a Communione, si perseverat deponitur. But however it cannot be denied, but there were Ancient Canons against the Marriage of Priests, but those only forbid Priests to Marry, but did not restrain Married Men from being Priests; and so it continued for many hundred years after Christs time, and for some time they might have Married * with the Licence of the Bishop; but * Concil. An-
 never received or put in practice in En-cyran. can. 10.
gland, though practised in *Italy, France*, &c. but the Priests here Married, till *Anselme* Arch-bishop of *Canterbury* a *Burgundian*, a powerful and busie Prelate in a Synod or National Council held at *Westminster*, made a severe Canon against it; but he meeting within *Hollingshead*
 an obstinate Clergy, that were unwill- 30. b. 10.
 ling to change their Wives for Concubines (to speak in the softest word) were not obedient: whereupon (as my Author tells me) he called a second Council in the ninth year of that King, where he made more severe Canons against the Married Clergy in the presence of the *Hollingshead*
 King and Nobility, to give them greater 34. b. 10.
 Authority, which he prosecuted with great zeal, but did not live to effect what he desired. I do not find that his Successor *Rodolphus* troubled himself much
 in

in this concern of the eight years that he Governed the Church of *Canterbury*; but his Successor *William Corbet* followed the steps of *Anselm*, who for this and his other good works was Canonized a Saint at *Rome*: and in the year 1126. called a Council or Convocation at *Westminster* against the Married Priests, wherein one *John de Crema* or *Cremensis* the Pope's Legate sent to manage this business, being a learned Man, made an Eloquent Oration in commendation of Chastity and a single life, and inveighed violently against the Married Clergy; and as divers Authors of good credit affirm, the great Orator was the same night taken in bed with a Woman, which made him to return with shame enough howsoever, as Bishop *Goodwyn* tells us, that in that Convocation the Canons were renewed against the Married Clergy; but the Arch-Bishop finding himself too weak to deal with so stubborn a Clergy, commended the care of this business to the King, who taking advantage of the Canons, squeezed some Money out of the Married Clergy by way of Commutation. I find no more of this matter, till after the death both of this Arch-bishop and *H. 1.* But I find there was a Convocation held at *London Decemb. 13. 1138.* by the Command of *Albert* Cardinal Bishop of *Hofia*, where this matter was again violently

Hoveden in
H. 1. 274.
Speed 461. a.
&c.
Bish. Goodwyns
Catalo. of Bish.
83; Mat. Paris.
70. agrees with
Hoveden and
says, quod ipse
cum die illa
Corpus Christi
consecrasset post
vesperam fuit
in metrico
interceptus: res
ipsa notissima
negari non po-
test, dum mag-
num decus in
sumum dede-
cus commuta-
vit. Good-
win 84.
Fullers Eccl.
Hist. 27.

violently prosecuted: and I find no more
after of it till in a Convocation or Coun-
cil held under Rich. Wetherhead Arch-
Bishop of Canterbury 1229. in which it
is decreed, *Qui autem in Subdiaconatu*
vel supra ad matrimonium convolaverint,
mulieres renitentes & invitas relinquant.

Lindw. Si qui
Clerici.

But it should seem, notwithstanding all
this persecution, that for some years af-
ter some married men held their Livings:
for in a Synod or Council held by Otho
the Pope's Legate at Saint Pauls in Lon-
don in the year 1237. there is a Canon to

this effect, *Innotuit nobis, pluribus reso-*
lutibus fide dignis, quod multi proprie
solus immemores, Matrimonii contractis,
clandestine retinere cum uxoribus Ecclesias,
& Ecclesiastica Beneficia adipisci de novo,
& promoveri ad sacros ordines contra sta-
tuta sacrorum Canonum, non formidant,
&c. and then proceeds, *Quod si reper-*
tum fuerit aliquos taliter contraxisse, ab
Ecclesiis & Ecclesiasticis Beneficiis (quibus
tam esset quam quolibet alios uxoratos fore
decernimus ipso jure privatos) removeantur
omnino, &c.

Cap. de uxora-
tis a beneficiis
amovendis.

This nail being thus at length driven
to the head, the secular Clergy lay about
300 years under this Bondage, and
though if they would be at the cost they
might have dispensations to keep Con-
cubines; yet for the credit of his holiness
there was great care taken they should

L not

Cap. de Con-
cubinis Clerico-
rum removendis

* Nota.

Canons against
Concubins.

not do it publickly, or scandalously: to which purpose there is a Canon in the same Council I last mentioned to this effect, *Statuimus, & statuendo precipimus, ut ubi Clerici, & maxime in sacris ordinibus constituti, qui in domibus suis & aliis detinent publice Concubinas, eas a se prorsus removeant infra mensem, & illas vel alias de cetero nullatenus detenturi, &c.*

There was another Canon much like this made in another Council held under Stephen Langton Arch-Bishop of Canterbury at Oxford not long before, in the year 1222. to this effect, *Quod Clerici Beneficiati aut in sacris ordinibus constituti in Hospitiis suis publice tenere Concubinas non audeant, nec etiam alibi cum scandalo accessum publicum non habeant aditu.*

So that it appears clearly by these Canons that Clerks were not in those days positively and absolutely forbidden to keep Concubines; but it must not be done *publice nec cum scandalo*, nor must they have *publicum accessum*.

Dispensations
for Concubinage
Hist. H. by my
Lord Cherbury.
p. 131.

Art. 74.

Art. 91.

And it appears by the *centum graminas* that were presented to the Pope about the year 1521. by the German Princes, that it was one of the grievances of that Nation, that the Pope permitted Clerks, Religious, and secular Persons to live publickly with their Harlots and get Children; and that in most places the Bishops and their Officials not only tolerated

rated Concubinage upon paying Money in the more dissolute sort of Monks, but also exacted it of the most continent, saying, it was then at their choice whether they would have them or no.

So upon the whole matter, it seems, Calvins Inst. lib. 4. c. 12. Sect. 23. it was no offence in a Clergy-Man, that had a dispensation to keep a Concubine privately in a nooke without scandal, and go to her in the dark; but to keep a Wife of his own was a sin against the Holy Ghost, he must be deprived, he must be deposed. And therefore I cannot blame the *German* and *French* Laity, that they were so solicitous in the Council of *Trent* to have their Priests Married, being loath, as should seem, to trust their Wives and Daughters at confession with Priests that had not Wives of their own. And it was no less a Religious than prudent expression of Pope *Pius* the Second, that though there was many weighty reasons why Priests should be restrained from Marriage, yet the reasons for restoring them their wives were the more weighty.

I would not have the Reader to think that I speak this to reproach the Church of *Rome* with this matter as any of the allowed Doctrines of that Church; for I know there is many very severe Canons against the incontinence of Priests, and not so only, but that forbids them

Dyer 133. p. 1.
2 H. 4. 16. a.
Cap. de uxori-
tis a beneficiis
amovendis, ubi
supra.

to keep any Women in their Houses, but Mothers, Sisters and other near Relations, to avoid scandal and temptations. But I write this to shew the corruption of the Court of Rome, for whilst the Pope has power to dispence with the Canons of the Church, many will make the best ineffectual there.

Having given the Reader this Historical account concerning the restraint of the Marriage of Priests, and the success of it, I will in the next place shew what Acts of Parliament have been made relating to this matter, and which are in force at this day.

1 H. 7. cap. 4.
Statute that
the Bishops
should imprison
Priests for In-
continence.

In the first year of H. 7. there was an Act made, that it should be lawful to all Arch-Bishops, and Bishops, and other Ordinaries, having Episcopal Jurisdiction, to punish and chastize such Priests and Clergy and Religious men, being within the bounds of their Jurisdiction, that should be convicted before them, by examination and other Lawful proofs requisite by the Law of the Church, of Avowtry, Fornication, and Incest, or any other fleshly incontinency, by committing them to Ward and Prison, there to abide for such time as shall be thought to their discretions convenient for the quality and quantity of their Trespasse. And that none of the said Arch-Bishops, &c. be thereof chargeable, of, to, or upon any Action or false or wrongful Imprison-

It seems a Canon would not justify an Imprisonment.

Imprisonments, but that they be utterly thereof discharged in any of the Cases aforesaid by vertue of this Act.

This Law for ought I know stands still in force, but there was a severe Law made in the 31 H.8. whereby it was made Felony for a Priest carnally to use a Woman to whom he had been married or contracted; or if he kept company or familiarity with her, or if any Priest kept a Concubine, as by paying for her board, maintaining her with money or other gifts, or means to the evil example of others, he should forfeit all his Goods, Chattels and Spiritual promotions, and be put in prison for the first offence, and the second offence to be Felony.

But this seeming too severe, was the next year repealed, and it was enacted, That such Offender should for the first offence lose all his Goods, Chattels and Debts, and lose the profits of all his Ecclesiastical promotions; but one for his life, for the second offence to forfeit his Goods, Chattels and Debts, and the profits of all his Lands, and of all his Spiritual Benefices, Promotions and Dignities for his life. And for the third offence should make the like forfeiture, and be Imprisoned during life.

By an Act of Parliament made in the 31 of H.8. which is commonly called the Act of the six bloody Articles, by the third Article it was declared, that Priests

31 H. 8. ca. 14.
made Felony to
use their own
wives.

32 H. 8. c. 14.
mitigated.

31 H. 8. c. 14.
The six Arti-
cles make the
marriage of
Priests Hæresie.

after they have received Orders might not marry, and to affirm the contrary thereof was made. Heresie and Treason by that Act: but this bloody Act was repealed by 1 E. 6. cap. 12.

All Laws against marriage of Priests made void.

Children legitimated.

By the Statute of 2 and 3 E. 6. ca. 21, all Laws, Statutes, Canons, Ordinances and Constitutions made against the Marriage of Priests are made null and void.

And by another Statute made the fifth and sixth of E. 6. cap. 12. It is adjudged and declared, that the Marriage of Priests is Lawful, and legitimates their Children, and makes them capable to endow their Wives, and to be Tenants by the Courtesie. But these Laws were repealed by the Statute of 1 Maria cap. 1.

1 Jacob. c. 25.

However it came to pass I know not, but for ought I can find, these Acts lay repealed all Queen Elizabeth's time, till 1 Jacob. when the latter Act was revived and made perpetual, and their Children made legitimate.

So that upon the whole matter all acts of Parliament, Canons, Constitutions, &c. that restrain the Marriage of Priests, or that illegitimizes their Children, are made null and void; but the Canons and Acts of Parliament that punish their Incontinency stand in force. Next let us see what Priviledg the Clergy have right to at this day.

C H A P. XI.

The Eleventh Chapter shews, what Priviledges belong to the Clergy at this day by the Common and Statute Laws of this Realm, and likewise by the Laws Ecclesiastical.

THE Laws of this Realm have allowed the Clergy in holy Orders many great Priviledges: First, in their Persons, they are not compellable to serve in any Temporal Office, as Sheriff, Constable, Overseer of the Poor, &c. The Priviledge of the Clergy. 2 Inst. 3. 625. 4. May not be Officers temporal. 5 E. 3. c. 5. 1 R. 2. c. 15. Must not be arrested in Church or Church yard. Neither can they be prest to serve in the Wars: neither may they be arrested in the Church, or Churchyard, when they are attendant on divine Service, upon pain of Imprisonment, and ransom at the Kings pleasure, and likewise to make agreement with the Party.

And by a Statute made 1 Marie, It is enacted. 1 Marie Sell. 2. cap. 3.

That if any Person, &c. of their own Power and Authority at any time, &c. shall do willingly or of purpose by open and overt word, fact, act or deed maliciously or contemptuously molest, let, disturb, vex or trouble, or by any other unlawful way or means disquiet or misuse any Preacher or Preachers, &c. licensed, allowed or authorized. Must not be disturbed praying or preaching.

zed to preach by the Queen, or by any Arch-Bishop or Bishop of this Realm, or by any other lawful Ordinary, or by either of the Universities, &c. or otherwise lawfully authorized or charged by reason of his or their Cure, Benefice or other Spiritual Promotion or Charge, in any of his or their Sermon or Collation in any Church, Chapel, or Church-yard, or in other place appointed to be preached in.

Or if any Person, &c. shall maliciously, willingly or of purpose molest, let, disturb, vex, disquiet, or otherwise trouble any Person, Vicar, Parish-Priest or Curate, &c. saying, doing, singing, ministring or celebrating mass, or other Divine Service, Sacraments &c. that at any time then after shall be allowed, set forth or authorized by the Queens Majesty.

That the Offender upon Conviction before two Justices of the Peace shall by them be committed to the Goal without bail or mainprise for three months, and after in the next Quarter Sessions: where if he repent and be reconciled, then to be discharged of his Imprisonment, finding sureties for his good behaviour; and if he fail therein to be continued till the next Quarter Sessions.

This Act though made in the time of Popery is still in force, and may be executed upon such as disturb the present Ministers, Parsons, Vicars and Curates,
&c.

&c. And though it refer to such Church-Service as then after should be settled by the Queen, yet I conceive it extends to her Successors; and a settlement by Act of Parliament is a settlement by the King in the most superlative manner; and the late Act for Uniformity declares and enacts, that all former Acts for Uniformity of Common Prayer, shall be of force, and extend to the Book of Common Prayer.

14 Car. 2. c. 4

The Bodies of Clergy-men cannot be arrested upon any *Capias* sued forth upon any Statute-Staple or Statute-Merchant; for the Process are made out conditionally *Si Laicus fuerit*: and if the Sheriff or any other Officer arrest a Clergy-man upon any such Conditional Process, I conceive an Action of false Imprisonment lies against him that does it, or he may have a special *Superfedeas* out of the Chancery, (that is, the Cursitors Office.)

Must not be arrested.

2 Inst. 4.
Regist. 147.

And every Parson, Vicar, &c. is by the Common Laws of England free from the payment of tolls in all Fairs and Markets, not only for all the Goods and Merchandizes gotten upon their Church-Livings, but also for all Goods and Merchandizes by them brought to be spent upon their Rectories and Church-Livings.

Priviledge in their goods.
Regist. 260. a.
Free from Tolls.

And

Pontage,
Murage.

And they are quit of Pontage, Murage and other like charges; and if they be distrained for any of these, they may have a Writ out of the Chancery, as afore said made of course without petition or motion, under the great Seal of England directed to the party that distrains or disturbs them for any of these things, commanding them to desist: and if such Writ be not obeyed, the Curfitor of the Court will make out an *alias* and *pluries*; and if none of those will be obeyed, an Attachment to arrest the party and detain him till he obey: and this Writ is called a Writ *De essendi quietum de tollendo*, which you may see in the Register or in the *Natura brevium*.

Regist. 160. a.

F.N.B. 227. f.

Not bound to
appear at Leets
and Sheriffs
Turns.

Regist. Or.

175. a.

F.N.B. 160. c.

They are not bound to appear or to suit at the Sheriffs Turn, or any Leet or Law-day; and if they shall be distrained so to do, they may have a Writ of course in the Chancery directed to the Lord of the Leet, commanding him to forbear distraining them for any such Cause, with like process as in the last for his contempt.

Stat. 13 E. 1.

2 Inst. 491.

492, 493.

And by the Statute of *circumspecte Agatis* it is enacted, *De violenta etiam munum iniectione in clericum, & in causa defamationis placitum venebitur in Curia Christianitatis, dummodo ad correctionem peccati agatur; & non petatur pecunia.*

And

And if a Clergy-man have Lands, by Regist. orig.
the tenure of which he is subject to be 187. b.
Suff, Reave or Beadle, and be chosen F.N.B. 175. b.
into any such Office by reason thereof, he *Not to be Bay-*
has a Curfory Writ out of the Chancery *liffs, Reaves,*
to discharge himself. &c.

So if the Sheriff or Collector of the Regist. orig.
Tiths or Fifteens will disturb them in 188. a.
the Lands belonging to their Churches, F.N.B. 176. a.
&c. they may have the like Writ for *Must not be*
their discharge, and like Process for dis- *disturbed by*
obeying of it, *ut supra.* *Collector of*
Tenths.

But it hath been held, that Tithes may Harwood vers.
be extended upon an *Elegit* for the debt Pa'yn, 24 Car.
of the Parson, *quod mirum*: But the E- 1. B.R. per B.
legit being given by a Statute in which
Tithes are not excepted, it will draw in
Tithes.

Anciently if a Clergy-man had been 2 Inst. 633.
convicted of any Murder, Robbery, Burg- 634, 635.
lary, &c. he was upon the demand of his *The Priviledge*
Ordinary to be delivered over to him, *of Clergy in*
where he was to make his Purgation ac- *criminal Cases.*
cording to the Rules of the Ecclesiastical

Laws; and if he cleared himself, he was * Lindwood.
acquitted * without any regard to his Con- cap. *Clerici pro*
viction at Common Law; but if they *suis criminibus*
adjudged him guilty, then he was to be *desent. gloss.*
degraded and kept in Prison: and this *verb. pro con-*
was confirmed to them by several Acts *victis.*
of Parliament. But this priviledge was West. 1. ca 2.
never allowed to them in this Kingdom Malbr.c. 27.
in Treason, Petit Treason, or Sacriledge. 25 E. 3. cap. 4.
and 4 H. 4. c. 3.

And

4 H. 7. cap. 13. And a Delinquent might have had his Clergy *ad infinitum* till the Statute of 4 H. 7. And though this priviledge of the Clergy be taken totally away in many cases by several Statutes, and in other cases Lay-men have it in common with the Clergy, if they can read as a Clergy-man; and though the delivery of them over to the Ordinary be totally abolished; yet the Clergy that are in holy Orders at this day retain some of their ancient priviledges, which the Lay-men are not capable of.

Co. 5. 50.
Bro. Corone
211.
2 Inst. 237.
Hob. 294.

For if a Clerk in Holy Orders be convicted (that is found guilty by the Petit Jury) of a Crime for which the benefit of the Clergy is allowable; at this day he shall not upon the allowance thereof be burned in the hand (as a Lay-man shall) upon the producing of his Orders; and if he have not them with him, the Court may, *ex gratia*, give him time to produce them till any other Assize or Sessions.

Stat. 4 H. 7. 13. And a Clerk in Holy Orders at this day shall have his Clergy *ad infinitum*, 28 H. 8. ca. 1. from time to time, which no Lay-man 1 E. 6. cap. 12. can have above once.

Stat. 3 E. 1. c. 1. The Goods of Clergy-men were by 14 E. 3. c. 1. several Statutes exempted and freed from 18 E. 3. c. 4. the Kings purveyance; but his Majesty 1 R. 2. c. 1. having by Act of Parliament graciously released this duty, the Laity hath the same priviledge. A

Purveyance.

A Clergy-man shall not be amerced ^{2 Inst 627.}
the higher in respect of his Church-Li- ^{Not amerced for}
ving or Benefice. ^{the Church-land}

Nor shall any execution be executed ^{Regist. orig.}
upon the goods of his Church, nor any ^{289.}
distress taken in the ancient Fee thereof; ^{F. N. B. 29.}
but otherwise it is of Lands of late pur- ^{No execution}
chase: and if he fear any such thing he ^{upon the goods}
may have a Protection in Chancery ^{of the Churches.}
clausula, (Quia volumus.)

If an Action of Trespas, Debt, Ac- ^{2 Inst. 4.}
count or other Action, wherein process ^{No Capias a-}
of *Capias* lies, be brought against a Clerk ^{gainst a Clerk.}
in Holy Orders, and the Sheriff upon the ^{9 E. 3. 30.}
Original return that the Defendant is ^{24 E. 3. 44.}
Clericus Beneficiatus nullum habens Lai-
cum feodum ubi summoniri potest; in this
case the Plaintiff cannot have a *Capias*
to arrest his body, but a Writ to the Bi-
shop to compel him to appear.

And by a Statute made in the fiftieth
year of E. 3. it is recited, ^{50 E. 3. c. 5.} *That as well*
divers Priests bearing the sweet body of
our Lord Jesus Christ to sick people, and
their Clerks with them, as otherwise di-
vers other persons of Holy Church, whilst
they attend to divine Services, in Churches,
Church-yards, and other places dedicated
to God, be sundry times taken and arrested
by Authority Royal, and commandment of
other Temporal Lords, in offence of God
and Holy Church, and also in disturbance
of such divine Services: the King wills,
and

and grants, and defends upon grievous forfeiture, that none do the same from henceforth: so as collusion or feigned cause not found in any of the said persons Holy Church in this behalf.

1 R. 2. cap. 15. In the first year of R. 2. there was another Statute made to the like effect with this added, *That the party convicted should be imprisoned, ransomed, and made agree with the party so arrested.*

Co. 12. 100. So that if any Parson, Vicar or Priest be arrested in going, staying, or returning to do Divine Service according to his duty, he may have an Action upon this Statute, and recover damages, and have the party fined and imprisoned that made the Arrest, and the Clerk that is assistant may have the benefit of these Laws.

*Priviledge of
the Clergy con-
firm'd by sever-
al Parliaments*

And note, that all the Priviledges of the Church of England are confirmed by the Ancient and good Statute of Magna Charta: And so they were for the most part at the opening of every other Parliament after, till the beginning of the Reign of H. 5. How it began then to be discontinued by the negligence of the Clergy, or for what other cause, I know not.

And so having thus briefly mentioned many of the priviledges of the Clergy, whereof the Common Law takes notice, and to which they have right at this day

by the Laws and Statutes of this Realm,
that I will shew the Reader what Pri-
viledges they pretend unto, at, and by
the Canon and Civil Law, which Mr.
Lindwood reckons up in fourteen parti-
cles:

Primo, in hoc quod non convenientur Chap. Item
non Judice seculari. Vide concil. Aga- statimus verb.
Canon. 23. clericali privi-
legio.

But this Priviledge has not been al-
lowed to them here in *England*, and this
was resolved in the 7th year of H. 8. in
the case of one Dr. *Horsey*, Chancellour of
the Bishop of *London*, of which case for
the rarity I will give the Reader a brief
account, and it was thus:

One John Hunn a *Merebant* of Lon-
don had prosecuted *Horsey* in a *Præmu-*
nire, whereupon *Horsey* caused Hunn to
be arrested for suspieion of *Heresie*, and
committed him to *Lollards Tower*, being
the Bishop of *London's* prison, and in a
morning soon after the Prisoner Hunn
was found dead and hanged in Prison, and
it was given forth, that he had hanged him-
self in his Girdle; but notwithstanding
it was believed, that *Horsey* and the Goaler
had murdered him. This coming to the
Goalers ear, he took sanctuary at *West-*
minster; upon which and other great Cir-
cumstances *Horsey* and the Goaler were by
a Coroners Inquest in *London*, upon view
of the body, found guilty of the murder;
and

Kelway 182.
&c.

4 H. 8. c. 2.

and Horsey, as should seem, being in Orders (I dare not say Holy) stood upon the Priviledge, not to be tried before Temporal Judges. And this being a dispute between the Kings Prerogative and the Priviledge of the Church, the King at request of the Temporal Lords and many of the Commons in Parliament, called before him at the Black-fryars divers of his Spiritual Council; Divines and Canonists, where the Clergy had one of their Council argued for their Priviledge; and Doctor Standish a learned Divine argued for the King; but the great offence taken was against the Abbot of Winchcomb, who in his Sermon preached at Pauls-Cross in the time of the Parliament had affirmed, that the Act made 4 H. 8. (which took away Clergy from Layicks in many capital offences, but not from Clerks in Holy Orders) was against the Law of God, and Priviledge of the Clergy, and that the makers of the said Act had incurred the censures of the Church. Soon after Doctor Standish who had argued for the King, was cited before the Convocation, and there charged with matters of Heresie arising from matters which had passed in his Argument, whereupon he made his application to the King, who being satisfied of the justness of his Cause by Doctor Veisley, Dean of his Chappel, assembled all his Judges and Council Spiritual and

Tempo-

Temporal, and divers of the Parliament Men; and after hearing of Divines, &c. the Judges declared, That those of the Convocation House that were at the awarding of the Citation against Doctor Standish, were in a *Præmunire*. And Finneux Chief Justice did declare in the name of all the Judges, That the Convocation of Clerks before Temporal Judges had been maintained by many good and religious Kings of this Realm, and many good and holy Fathers of the Church had been obedient to it, and content with the Law of the Land in this point, &c. And Doctor Vessey gave the reason, Because the Canon in that point was never received or allowed in England. But the Clergy not being satisfied, the two Archbishops (who affirmed that they were bound * by Oath to maintain the Privileges of the Church) moved the King: that to avoid the † Censures of the Church, he would refer the matter to the Pope. But H. 8. stoutley answered, That he by the decree and sufferance of God was King of England, and the Kings of England in time past had no Superior but God only; and therefore know, that he would maintain the right of his Crown and his temporal Jurisdiction, as well in this point as all other. And after Horsey (that all this while had been pro-
 M beth)

Nota

† Nota

both) the Bishops having made his plea with the King, appeared privately in the Kings Bench, and pleaded Not-guilty to the Inquisition; and Erneley the Kings Attorney confessed the Plea, whereby Hosley was discharged (the more pity) and the Bishops promised to dismist Standish, and so this point was settled against the Church, as 'twas very great reason. I shall make no Comment upon the Case, though there are many things in it worth observation, and those that are not satisfied with this short account of this Case, may read it at large in *Kelway's Reports* with all the Circumstances, and the Reader will not think his time ill spent, but with me praise God, that the King and Nation are freed of the Popish bondage and Clergy.

2. The Second Priviledge mentioned by *Lindwood*, is, *Quod verberans Clericum incidit in Canonem*.

This Priviledge is confirmed to the Clergy by the Statute of *Circumspelite agatis*, that the Spiritual Court should have Jurisdiction, *de violenta manu iniectione in Clericum*; but the end of such Suit in the Spiritual Court is only, *pro salute anime*, by Excommunication or Penance. And if a Clerk should sue in the Spiritual Court in point of damage, he runs himself in danger of a *Premunure*; for the Ecclesiastical Judge may proceed

and only *ex officio* to correct the sin. But if the Clerk will in this Case recover damages, he must bring his Action at Common Law; and note, that such Suit in the Spiritual Court can only be sued by certain Holy Orders.

3. The third Priviledge *Lindwood* mentions is, *Quod non vocantur ad onera secularia*.

This Priviledge the Common Law allows; but it must be intended of such Charges as were at Common Law, but not of new Charges by Statute Law; in which the Clergy are not exempted, as has been said before in the beginning of the Chapter.

And yet note that the Clergy till the late Rebellion granted all their Subsidies to their Convocations, but in the late Acts of Parliament are taxed promiscuously.

4. The fourth Priviledge *Lindwood* mentions is, *Quod possunt facere Collegium ubi hoc Laicis non licet*.

It is true, that before the Reformation the Clergy have erected Colledges, Abbies, Priories, and other Spiritual and Religious Corporations by the License of the Pope or the Bishop; but generally confirmed by the Kings: But without License of the Bishop of the Diocess, it was forbid to erect any such by several Canons; and by such License

Vide Dyer
267. a. b. &
81. a.

Conc. Agatha
Can. 18.
Concil. Aure-
lian Can. 18.
q. 2. Grat.

I take it a Lay person as well as a Clergy man might have erected a College &c. But here in England the Clergy never had greater Priviledge then the Laity in this matter, for no such Corporation could ever be erected here but by the Royal Authority.

5. The fifth Priviledge reckoned by Lindwood is, *Quod possunt vendicare in concessam Ecclesiam ante deliberationem*. This Priviledge is of no use here in England, because the Spiritual Courts have not power to determine the right or property of Land or Goods.

2 Inst. 492.

6. The sixth Priviledge is, *Quod in dem Privilegio gaudent persona & familia*. This Priviledge holds no further here in England, than in such particulars are mentioned in the former part of the Chapter.

7. The seventh Priviledge by Lindwood mentioned is, *Quod facientes Statuta contra Clericos sunt ipso facto communicati*.

He that would attempt to put this priviledge in Execution, would endanger to run himself in a great *Premur*, and many Statutes have been made against the Clergy in the height of Popery, the Reader may find in many parts of the Book.

8. The eight Priviledge is, *Quod si Clerici possunt beneficium Ecclesiasticum obtinere*. This

This is allowed without dispute. I

The ninth is, *Quod per literas impetratas contra Laicum, cum clausula generalis non potest Clericum conveniri.*

I must leave this to the *Civilians* to determine, for I must ingenuously acknowledge I do not understand the meaning of this nor the next; which

10. *Quod in Civili nomina sportularum non tenentur dare nisi quatuor siliquas.*

Hæc tamen de jure Canonum non debentur, says the Author, and then proceeds;

11. *Quod de Acquisitis licet sint in potestate Patris possunt testari.*

This and the next Priviledges are in the Spiritual Law and Courts, and not opposed by the Common Law.

12. *Quod sine consensu Patris agere possunt pro rebus suis recuperandis.*

13. The thirteenth I must leave as I find it; and it is, *Quod non Pignori.*

14. The last is, *Quod si sciente Domino servus efficiatur Clericus liberatur a Domini potestate.*

I do not find any such Priviledge allowed in *England*, but it may be reasonable enough; these four last are only known to the *Civilians*, to whom I leave them.

And so much for the Priviledge of the Clergy by the Canon and Civil Law; but I conceive they receive more benefit by those the Common Law allow to them.

C H A P. XII.

The Twelfth Chapter shews, how the Law stands concerning Churches, Chappels, and Church-yards, in whom the Freehold is, and how to be repaired, and concerning Seats, Burials, Tombs, Coats of Arms, and other Ensigns of Honour in memory of the dead, and of Church Ornaments, and at whose charge to be provided, and what remedy against those that shall commit any Trespas in the Church, Church-yard, or in breaking up Tombs, taking, carring away, or imbezelling any of the Goods, or Ornaments of the Church, &c.

THe word *Church* is taken from the Saxon word *Circe*, or *Ciric*, which name is still retained in the North parts of *England*, and in *Scotland*, by changing the *C* into *K* as was usual with the English Saxons, in Latine *Ecclesia*, or *Basilica*, from the Greeks, and it hath in the Holy Scriptures several acceptations; *The several acceptations* for sometimes it is taken for one Family of the faithful People of God, as *1 Cor. 16. 19. Rom. 16. 4, 5.* Sometimes for the

Christian People of one Country or Province, *Rome. 6. 23.* Sometimes a Council or Synod is taken for the Church: *Mat. 18. 17.* and sometimes, *pro universa fidelium per totum terrarum orbem diffusorum* multitude: And sometimes for the Material Church, as *1 Cor. 11. 18.* and *14. 34.* And that is the Church of which I am now to discourse, *That is a Building made of Stone, Brick, Timber, and other materials, for the meeting of Christians to hear the word of God read, and preached, and to join in Prayer, and other Religious Duties; built by the Licence of that Bishop in whose Diocese the same is erected, and by him Consecrated to that Service, an Office peculiarly belonging to the Office and Dignity of the Bishop.*

The material Church, quid.

Distinctio I.
Nemo Ecclesiam.

The manner of founding of Churches.

Causa 16. q. 1.
quacunq; q. 3.
Lator Concil.
Calcedon 1.
can. 4.
* Ut Major
Ecclesie per
circuitum 40.
passus habeat
Capella veto
vel minoris Ecclesie. 30. c. 17. q. 4. de consecratione distinct.

1. nemo Ecclesiam. See Sir Tho. R. dleys view of the Civil and Ecclesiastical Laws 191. more of this matter.

fore

for the Sacraments were not to be administered in it.

But by the Common Law and Custom of England, any good Christian may build a Church without the Licence of the Bishop, which was confirmed by the Pope at the request of King John, with this qualification, so that it were with the Bishops consent, and not prejudicial to any ancient Churches: But however the Law takes no notice of them as Churches, nor have they any priviledge, till they be Consecrated by the Bishop.

And in some Cases though a Church have been Consecrated, it must be reconsecrated, as in case any Homicide, Adultery, or Fornication shall be committed in it, or the Church burned, but the rebuilding of the Walls, if the Alter (that is the Communion Table) were not removed, requires no new Consecration, nor Churches consecrated by Hereticks, *In de Sancte Trinitatis in forma Ecclesie*, are not again to be Consecrated.

The Church consists of three principal parts, that is, the Belfray, or Steeple, the Body of the Church with the Isles, and publick Chappels, and the Chancel.

The freehold of the whole Church, and Church-yard, are in the Parson or Rector, and therefore the Parson may have an Action of Trespas against any body that shall do any Trespassable act in

3 Inst. 201.
Who may build a Church.

3 Inst. 203.

Where a Church shall be reconsecrated. Concil. Nicæ pars 3. distinct. 1. Ecclesiis semel. ibid. Si mortum.

ibid.

Division.

In whom the Freehold is.

11 H. 4. 12. 2.
21 H. 7. 21. b.
Cro. Jac. 667.
8 H. 6. 9. 8 H.
7. 12. 38 H. 6.
19. 15 H. 7. 8.

8 H. 6. 9.

8 H. 7. 12.

36 H. 6. 19.

15 H. 7. 8.

Noy 104.

*who is to re-
pair Churches.*

2 Inst. 653.

Coke 5. 67. b.

Stat. tit. ac-
compt.

*How Churches
were antiently
repaired.*

C. 10. q. 3.

*Quia vero &
placuit ut nul-
lus Concil.*

Braga. cap. 2.

Cathedraicum

*how it came**dur.*

in the Church, or Church-yard, as breaking Seats annexed to the Church, breaking the windows, cutting the Trees, or taking away the Leads, or any of the materials of the Church, or for breaking Windows, the party may be indicted, and fined, and bound to his good behaviour.

The Body of the Church, the Belfry, and all publick and common Chappels within, or adjoyning to the Church, as by the Laws and Custom of England, to be reedified, maintained, and repaired, at the charge of the Parishioners and Landholders within the Parish, and here in the Common Law, and custom of England is kinder to the Clergy, then in other Countries, where the whole charge lyes upon the Rector.

Anciently the Bishops had a third part of the Tithes, and Offerings, in some places a moiety, and in some places a fourth part, and in consideration thereof were bound to the repair of the whole Church, but upon a Release of this interest to the Rectors, they were acquitted of the repairs of the Churches, and had only two shillings for the Honour of the Bishops Chair, in lieu thereof, called *Cathedraicum*, which duty, as I take it, was never paid in England, and the reason might be, because the Bishops here were never charged with the repair of the Churches, and had therefore no

share

here in the Offerings, *samen inde quere.* ^{Who is to raise}
 The Church-Wardens are to raise the ^{mony for the}
 Money for the repair of the Church, and ^{repair of the}
 to make the repairs, and for the raising ^{Church.}
 monies to that purpose, they are to
 make their levies in this manner.

The Sunday before the Church-Wardens design to make a levy, they are to ^{The manner to}
 give publick notice in the Parish Church, ^{make a Levy}
 immediately after Common Prayer, of ^{for the Church.}
 the time and place designed for making ^{Co. 5. 67. b.:}
 the intended Levy, and then at the time
 and place apointed, the Church-Wardens, and the Parishioners, there met, are
 to consider what Sum of Money will be
 necessary to be raised for such repairs, as
 shall be then needful, and after they, or the
 Major part of the Parishioners there met,
 have agreed what sum is fit to be raised,
 then they, or the major part there present
 are to proceed, and make an equal ^{How it is to}
 levy upon all the Parishioners and Land- ^{be recovered.}
 holders within the Parish, and if any of ^{Star. Circum-}
 the Parishioners refuse to pay their rates, ^{specte Agatis.}
 being demanded by the Church-Wardens, ^{13 E. 1.}
 they are to be sued for, and to be ^{Regist. or. 44.}
 recovered in the Ecclesiastical Court, and ^{b.}
 not elsewhere. ^{Britton l. 1.}
 cap. 4.

But in case the bounds of the Parish ^{Prohibition}
 come in dispute in the Ecclesiastical ^{lies where the}
 Court, that is, If the party assessed aver ^{bounds of the}
 that the Land for which he is assessed lies ^{Parish are con-}
 in another Parish, and not in the Parish ^{troverted.}
 where ^{Rolls 2. 291. l.}
 1. 5. 4.

*What to be
done if the
Parishioners
will not make
a Levy.
cap. Archidia-
coni verbo
subpena.*

where it is assessed, if the party be contentious he may have a prohibition and try it at Common Law.

And if the Parishioners when they come together at such meeting, refuse or neglect to joyn in making such assessment, or refuse to meet, I conceive the Church-Wardens having just cause for such assessment, may proceed alone, if the Church-Wardens shall neglect to make the repairs when duly admonished by those that have the power to visit within a certain time the Ordinary or other visitors shall limit; they may proceed against the Church-Wardens by Ecclesiastical censures to compel them to it: And the Law never compels any body to do a thing they have not mean to effect, and it should seem in this that the Parishioners are likewise punishable by the Ecclesiastical Judge, for their neglect in this kind.

Hetley 61.

But some are of opinion that the Church-Wardens cannot proceed alone, but must compel the parishioners to do by Ecclesiastical Censures: *Ideo quer.*

*Rolls 2. 308.
v. 20.*

And it should seem that by Custom Lands in a forreign Parish may be charged to the repair of the Church.

*How to be re-
lieved against
unequal Assess-
ments. Rolls 2.
189. H. 6.
Co. 5. 67. 2.*

And if any person find himself aggrieved at the inequality of any such assessment: his appeal is to the Ecclesiastical Judge who is to see right done.

Every

Every one that holds any Lands within the Parish, is in Judgment of Law a Parishioner, chargeable to this Tax, but the Landlord in respect of the Rent he receives, is not chargeable to the repair of the Church; nor in that respect can he be a Parishioner.

Landlords not Taxable for their Rents.

And these levies are not chargeable upon the Land, but upon the person in respect of the Land, for the more equality and indifferency.

These Taxes are upon the person in respect of the Land.

But there has been some question made, where one that holds Lands in one Parish, and resides in another, may be charged to the Ornaments of the Parish Church where he doth not reside; and some Opinions have been, that Forreiners were only chargeable to the Shell of the Church, but not to Bells, Seats, or Ornaments.

Who is chargeable to the Ornaments.

*Rolls 291.
k. 1, 2.
2 Brownlow
10.*

But I conceive the Law to be clear otherwise, and that the Forreigner that holds Lands in the Parish is as much obliged to pay towards the Bells, Seats, and Ornaments, as to the repair of the Church, otherwise there would be great confusion in making several levies, the one for the repair of the Church, the other for the Ornaments, which I have never observed to be practised within my knowledge.

Landlords chargeable.

Landholders are, and the reasons.

Secondly, It is possible that all, or the greatest part of the Land in a Parish may be held by Forreigners, and it were unreasonable in such case to lay the whole charge

charge upon the Inhabitants, which may be but a poor Shepheard.

Thirdly, The reason alledged against this charge upon the Forreiners is chiefly because the Forreigner has no benefit by the Bells, Seats, and Ornaments.

Coke 3. 67. b. Which receives an answer in *Jefferies Case*, for there it is resolved, that Landholders, that live in a Forreign Parish, are in judgment of Law Inhabitants, and Parishioners, as well in the Parish where they hold Lands, as where they reside; and may come to the Parish meetings, and have votes there as well as others.

Cap. licet parochiani.

For Authorities in the Case it is clear by the Canon, that all Landholders *in ipsis degentes, vel alibi, ad quavis unum Parochianorum ipsos ipsam Ecclesiam & Ornamenta ejusdem concernentia, & in his de jure vel consuetudine incumbentia, consideratis possessionem & redditum hujusmodi quantitativis, cum ceteris parochianis Ecclesiarum prediarum, quorum opus fuerit, contribuere teneantur.*

Authorities.

And I have seen a report under the hand of Mr. Latch, that it was resolved in *Wilymots case*. *H. 8. Jac. B.R.* and in *Chesters case*, 10 *Jac.* that a Forreigner that held Lands in another Parish wherein he did not reside, was as much chargeable to the ancient Ornaments of the Church, as Bells, Seats, &c. as those that lived in the Parish; but that such Landholders

holders, could not be charged to new Bells, Organs, &c.

And Mr. Bulstrode reports a case about the same time, That the Chief Justice Fleming, and Mr. Justice Williams were of the same Opinion, and gave this reason, That the Forreigner might come to Church if he pleased. And having said thus much to this matter, I must leave it a *Quere* amongst these diversities of opinions.

It hath been resolved that the Major part of the Parishioners may make a Levy for new Bells, or Organs.

But if in the making a Levy for the repair of the Church, some of the Parishioners, or Landholders are omitted, if the Church-Wardens shall sue upon such a Levy, a Prohibition lyes in the case *tamen quere*.

Though generally all the Parishioners and Landholders within a Parish ought to be taxed towards the repair of the Church, as has been said; yet that Rule admits some exceptions.

For first, the Rectory or Vicarage which is derived out of it are not chargeable to the repair of the body of the Church, Steeple, publick Chappels or Ornaments, being at the whole charge of repairing the Chancel.

Secondly, The Founder of the Church may prescribe, that in respect of the foundation, he and his Tenants have been

1 Bulst. 204

Quere.

Rolls 2. 291

k. 4.

Additions

Popham. 197.

If some should be omitted in a Levy.

Rolls 2. 291.

k. 3. contra.

Ibid. 290.

H. 10.

who may be freed from

these Levies.

cap. licet parochiani.

The Rector and Vicar.

The Founder.

H. 3. Car. 1.

B. R. per

Henden.

been freed from the charge of repairing the Church.

Those of a
Chappelry: I
Hob. 67.
Rolls 2. 290.
I. 1, and 2.

Thirdly, It hath been resolved that the Inhabitants of a Chappelry may prescribe that in consideration that they have time out of mind paid Three shillings Four pence, to the repair of the Mother Church, or at their own charge repaired a certain part of the Mother Church, they have been freed from all other charges about the repair thereof.

Noy 47.
contra Rolls
2. 290. I. 1.

But a prescription by the Inhabitants of a Chappelry, that because they have time out of mind repaired some part of the Fence of the Church-yard, they have been freed from the repair of the Mother Church, has been disallowed.

Rolls 2. 311.
2. 1.

Marh. 91.

Hob. 67.

Rolls 2. 290.

H. 7. and 8.

contra Bull.

1. 16, 17. according and so it was resolved.

P. 42 El. B. R.

between the

Chappelry of

Coxwell, and

Church of Fa-

ringdon in

Berkshire.

Quere.

Rolls 2. 289.

H. 5.

Andrews ver-

sus Hutton.

H. 4. Car. 1.

Hetley 133.

And yet there hath been some relations, that the Inhabitants of a Chappelry may prescribe, that in consideration they have repaired their own Chappel time out of mind at their own charge, that they have been freed from the charge of repairing the Mother Church; but these being Opinions to the contrary, I will leave it as a *Quere*: but the better Opinion seems against such prescription.

If a Petie Chapman take a standing weekly in the Market to sell his Wares, he shall not for this be charged to the repair of the Church.

A Prescription that the Arrable Lands within a Parish had time out of mind

been only charged to the repair of the Church, has been disallowed, for the Houses are as well chargeable as the Land.

If two Churches be united the repairs Hob. 67.
of the several Churches shall be made as Churches united how to be repaired.
they were before the union.

And so much concerning the repair of Parish Churches, and publick Chappels annexed to them, and as for the repair of other Chappels, I shall defer till I come to speak of Chappels.

For that which concerns the repair of Chancels, see the *Apendix* to this Chapter in *fine Libri secundi*.

The next thing to be spoken of is the Seats in Churches.
Seats in Churches, built for the ease of the Parishioners to sit, kneel, and stand in, for the hearing the word of God read and preached, and joyning in Prayers, and other Religious Duties, with the other Parishioners.

These are to be built and repaired as By whom to be repaired.
the Church is to be, at the general charge of the Parishioners, unless any particular person be chargeable to do the same by prescription.

The Seats ought to be regular, and of In what manner to be built.
a moderate height, that the behaviour of the Parishioners may the better be observed; and if any body of their own heads shall presume to build any Seat in the Church, without the Licence of the who may build Seats.
N Ordinary,

* Dantries

Case.

T. 2. Jac. C. B.

11 H. 4. 12. a. *

Cro. Jac. 667.

21 H. 7. 21. b. *

*Seats cut, or
pull'd down,
who shall have
the materials.*

8 H. 7. 12.

*What the Par-
son may do in
the Church.*

Noy 108.

Ordinary, or consent of the Minister and Church-Wardens, or in any inconvenient place, or too high, it may be pulled down by order from the Bishop, or his Arch-Deacon or by the * Church-Wardens, by the consent of the Parson, for the freehold of the Church, and all things annexed to it, are in the Parson, and therefore if any one presume to cut or pull down any Seat annexed to the Church, he may have an Action of Trespass against the misdoer (though he formerly set it up) if he do it without his consent, or order from the Ordinary; but if the Seat be set loose, he that build it may remove it at his pleasure, as I conceive.

But though the freehold of the Church be in the Parson, yet he cannot pull down any of the Seats anciently erected, or of late erected, but by Licence from the Bishop, or by the consent of the Church-Wardens.

If any Seats annexed to the Church be pull'd down, the property of the materials is in the Parson, and he may make use of them if they were placed in the Church by any one of his own head, without legal Authority; but for the Seats erected by the Parishioners by good Authority, I take it, the property of the materials upon removal is in the Parishioners.

The Church-Wardens, with the Approbation of the Parson, may by Custom dispose of the Common Seats, built at the charge of the Parish, and place the Parishioners therein, according to their degrees and qualities, but no such custom can exclude the Bishop from a temporary disposition of such Seats, but the Bishop cannot grant Seats to a man and his heirs, because they must be attendant to the Houses.

Who may dispose of the Seats.

Rolls 2. 288.

g. 1, 2.

3 Poph. 140.

Hob. 69.

Gratray & alii

vers. Beardef-

ley. H. 50, &

31 Car. 2. B. R.

But the Bishop has no power to dispose of the Seats in any private Chappel next to the Church that is not maintained and repaired at the Parish charge.

Rolls 2. 288.

The Seats in the Chancel are properly in the dispose of the Rector or Parson, but it should seem that a Parishioner may prescribe for a Seat there.

g. 5.

Holt vers.

Ellys.

Noy 133.

And note, that all that has been said before of Seats must be intended of such Seats, as no particular Parishioner has a right to by prescription, for wheresoever any Parishioner is owner of an ancient Messuage, to which any Seat has been used by prescription time out of mind, there the Ordinary, Parson or Church-wardens have nothing to do in the disposing of such Seat.

About prescriptions for Seats in Churches the Law has been controverted, for sometimes it has been held, that the Owner of an Ancient Messuage might

Cro. Jac. 667.

Co. 12. 106.

3 Inst. 202.
Noy. 129.

prescribe to have a Seat in the Isle of a Church, which himself repaired, after it went further for a Seat in the Body of the Church, which was repaired by him that prescribed to have it.

Buxton, ver-
sus Bateman.
T. 4. Car. 2.
B.R. Rot. 463.

But the Law is now settled in this Case that a Man that is Owner of an Ancient Messuage may prescribe for a Seat in any part of the Parish Church, within which Parish such Messuage stands, although he have not used to repair it: and this was resolved in an Action of the case brought by *Buxton*, against one *Bateman*, for disturbing him in a Quire, in the Body of *Tolgreave Church* in *Derbyshire*, which *Buxton* claimed by prescription to his House, by all the Judges of the Kings Bench, and after affirmed in a Writ of Error in the Exchequer Chamber, so that this point is now settled by all the Judges of *England*.

*Prescription
for burying.*

*Carleton ver-
sus Hutton.*
Noy. 78.

And as a man may prescribe for a whole Seat in a Church Isle, or Quire; so he may prescribe for the first, second, or other sitting, or place in a Seat; and in all these Cases of prescriptions, the Ordinary has nothing to do; but the matter is solely determinable at Common Law.

Co. Entries
8. b.

And as a man may prescribe to have a Quire, Isle, or Seat in a Church, so he may prescribe to an Ancient Messuage to have the sole Burial of his Dead, in such Isle, Quire, or place in the Church.

Anciently

Anciently none were admitted to be ^{who may be} Buried in the Church but Priests, and ^{buried in the} those that were of clear life and conver- ^{Church.} sation. ^{Spelmans}

* There was likewise anciently a pay- ^{Concil. 590.} ment due for those that were buried, cal- ^{n. 9. 451. n. 29.} led *Symbolum anime*, or *pecunia Sepul-* ^{545.} *chialis*, and this was paid, though the ^{* Ibid. 517.} Body was buried in another Parish. ^{Payment for} ^{Burials.}

But by the Canon Law, *Interdictum est* ^{Nothing to be} *omnibus Christianis terram mortuis vendere* ^{paid for Buy-} *& debitam sepulturam denegare.* But this ^{als. Concil.} must be intended in the Church-yard, for ^{Triburiensis} by another Canon in the same Council, ^{Can. 16.} it is expressly decreed, *quod nullus Laicus* ^{Can. 17.} *in Ecclesia sepeliatur nisi in Cimiterio.*

And by the same Council it is decreed, ^{where one shall} *ubi decimas persolvebat vivus, sepe-* ^{be Buried.} *liatur mortuus.* ^{can. 15.}

Anciently there were no Church-yards ^{No Church-} in Cities, nor burying of the dead, so that ^{yards in Cities.} the Arch-Bishop of Canterbury could not ^{Spelmans} be buried in his own Cathedral, till Cuth- ^{Concil. 290.} bert Arch-Bishop of Canterbury, obtained Licence from the King, that the Arch-Bishops might be buried in the Cathedral at Canterbury.

The Church-yards are of common right ^{2 Inst. 489.} to be fenced by the Parishioners. ^{Co. 6. 67.}

By the Custom of England, every ^{who may be} person (except such as are afterwards ^{buried in the} excepted) may at this day be buried in ^{Church-yard.} the Church-yard of the Parish where he ^{13. q. 2. quæstio} & ^{& tribus, &} dies ^{sepeliendum}

dyes without paying any thing for breaking the Soyl.

Who in the Church.

And by the Custom of *England*, every Parishioner (except as hereafter is excepted) may be buried in any Common part of the Church, or Chancel, paying the accustomed Fee to the Parson for breaking the Soyl, which for most part is three shillings and four pence in the Church, and six shillings and eight pence in the Chancel; and this is only for the breaking of the floor, and that's the reason that in some places the Church-Wardens have the Fee for breaking up the Church, though of common right it belongs to the Parson, and in this the custom must be observed.

Spelman's Concil.

564. leges Canonici cap. 20.

Who may set up Tombs.

3 Inst. 201. 3

Sir Edward Coke is of Opinion, that any Person may erect a Tomb or Monument for the dead in the Church, Chancel, publick Chappels, or Church-yards, in a convenient place, (but I conceive it must be intended by Licence of the Bishop, or consent of the Parson and Church-Wardens) And that if any Body break it, the party that set it there may have an Action against those that break or pull it up, or deface it; And after the death of those that set it, the Heir shall have the Action.

What remedy if broken.

More 878.

3 Inst. 202.

Who may not be buried in the Church, or Church-yard.

Some persons are denied Christian Burial, and therefore such persons are excepted in what is said before, and may

not

not be buried in the Church, or Church-yard, without special Licence from the Bishop. 13 q. 2. placuit & ibid. fatendum, & ibid. quibus.

That is, such persons as Murder themselves, dye Excommunicated, those that dye in any mortal sin, Sacralegious persons and Usurers; but of Usurers the Canon holds not in *England*.

For Grave-stones, Winding-sheets, Coats of Arms, Penons, or other Ensigns of Honour, hanged up, laid, or placed, in memory of the dead, the property remains in the Executors, and they may have Actions against such as break, deface, or carry them away, or an Appeal of Felony. Grave-stones, &c. More. 878. 9 E. 4. 14. a. CO 12. 113. 3 Inst. 110. & 202.

The property of the Bells, Books, and other Ornaments of the Church, is in the Parishioners, and in the custody of the Church-Wardens, who may maintain an Action of Trespas against such as shall wrongfully take them away, and the Successors may sue this Action for the taking away in the time of their Predecessors, and the damages recovered shall be to the use of the Parishioners, but they may declare * *ad dampnum ipsorum*, * *Cro. El. 179.* or *ad dampnum parochianorum*, and either way good, and the release of one Church-Warden * shall not bar his Companion; or they may have an Appeal of Robbery, for stealing the goods of the Church. whose the Bells, &c. are. 12 H. 7. 27. b. 37 H. 6. 32. 8 H. 5. 4. 10 H. 4. 9. who may have an Action for taking them. 8 E. 4. 6. b. * Cro. Jac. 234.

Property changed by Offerings.

34 H. 6. 10.
Co. 10. 91. a.

Goods may be given to the Church.

11 H. 4. 12.
Cro. Car. 343.

Reverence to the Church and Church-yard.

Numbers 35
v. 11.

where Sanctuaries were taken away.

Stat. 26 H. 8.
cap. 13.

By the Laws of England in the time of Popery, if a Stranger had taken my Goods, and offered them to an Image in a Consecrated Church, this had made as good a change of the property of my goods, as though I had sold them in a Market overt, but if I found the Goods after in the Wrongdoers possession, I might take them again.

A man at this day may give or dedicate Goods to Gods Service in such a Church, and deliver them into the custody of the Church-Wardens, and thereby the property is immediately changed, and the Church-Wardens may have an Action for the taking them away.

There has always been great reverence given to Churches, and Church-yards, and other places Consecrated to Gods Service; and anciently Churches and Church-yards, were Sanctuaries for Tryators, Murderers, Robbers, Thieves, and other Malefactors; and many Laws were made for the regulation of them, and restraining that privilege, till at last Sanctuaries with great reason were totally taken away, for they were not used like the Cities of refuge under the Law, for those that unawares killed others, but for all People, be the Crime never so horrid.

In the 26 H. 8. Sanctuaries were taken away in high Treason, in the 27th of H. 8.

H. 8. they were taken away in wilful Murder, Rape, Burglary, Robbery in the High way, or in any House, or in any * Church, or Chappel, and in wilful burning any House or Barn with Corn.

But by a Statute made in the 21 year of King James, they were finally taken away, and abolished, they having too long continued for the Protection of the greatest Malefactors, a thing unfit for hallowed places.

But that Churches, and Church-yards, should not be prophanelly used, is evident from the example of our Saviour, who cast out those that bought and sold in the Temple, and overthrew the Tables of the Money changers, and the seats of them that sold Doves, telling them, *My House shall be called of all Nations the House of Prayer, but you have made it a Den of Thieves.*

And in the Council of Ments it is forbid, *ut in Ecclesiis aut in domibus Ecclesiarum vel * atriis placita secularia minime fiant.*

And by a Canon made in the 6th General Synod at Constant. buying and selling is forbidden in Churches, and Church-yards, wherewith a Canon of our own, made in the time of King James agrees.

Stat. 27 H. 8.
cap. 12.
* Frustra implorat Ecclesiam auxilium qui in ipsam deliquit c. 17.
q. 4. Ad Episcopos.

Stat. 21 Jac.
cap. 28.
Sanctuaries finally taken away.

Mark. II. v. 15.

Courts not to be kept in Churches, or Church-yards.
can. 40.
* Church-yards.
Fairs and Markets not to be in Churches, or Church-yards.
Can. 76.
Can. 89.

And

Stat. Winton. And by a Statute made in the 13th year of E. 1. It is enacted, *That Fairs or Markets should not be kept in Churches or Church-yards, for the honour of the Church.*

Concil. Cabilonensis can. 17. There is a Canon to this effect, *Nullus secularium, nec in Ecclesia, nec infra atrium ipsius Ecclesie, qualecunque scandalum, aut similitates excitare presumat, nec arma trahere, aut quemcunque ad vulnerandum, aut interficiendum appetere, quod si fecerit communione privetur.*

And to the same effect there was a Statute made in the 5th year of E. 6. That if any Parson, &c. should by words openly quarrel, chide, or brawl, in any Church, or Church-yard, that then it should be lawful for the Ordinary of the place, the matter of Fact being proved by two witnesses, to suspend a Lay Person, *ad ingressu Ecclesie*, and a Clerk from the exercise of his Office as long as he shall think fit according to the quality of the Offence.

And that if any person shall smite, or lay violent hands upon any other in the Church or Church-yard, then *ipso facto*, every such person shall be deemed excommunicate.

No striking or drawing weapons in the Church or Church-yard. And if any person, &c. maliciously strike another in any Church, or Church-yard, with any Weapon, or shall draw any

any Weapon in any Church or Church-yard, to the intent to strike any other therewith, the party thereof convicted by Verdict, or two Lawful Witnesses, before the Justices of Assize, Oyer and Terminer, or Justices of the Peace in their Sessions, shall have one of his Ears cut off, and if he have no ears, then to be marked in the Cheek with a hot Iron, with the Letter F, & ipso facto Excommunicate.

It may be a question what the meaning of these words, *ipso facto Excommunicate* in this Act shall be understood, whether it shall be without sentence declaratory, or no, which is made a *Quere* in Dyer; but by the Canonists, there must be a Sentence declaratory.

Ipsa Facto.

Dyer 275. p. 48.

Lindwood

cap. Quia incontinentiz verb. ipso facto.

And the Law so abhors violence and force to be used in Churches, and Church-yards, that it will not admit a Man to strike again in his own defence in a Church or Church-yard, and therefore the Plea of *de son assault demesne*, is not allowed for a good Plea in that Case.

De son assault demesne, no Plea in a Church, &c. Cro. Jac. 367.

And to make an Arrest in a Church or Church-yard, immediately after Divine Service, when it may be done elsewhere, is Indictable and Final.

Arrest in Churches, &c. punishable. Cro. Car. 602.

And

ways through
Churches, &c.
18 E. 4. 8. a.

And yet it hath been held, that there may be a way through a Church, or Church-yard.

1 E. 6. cap. 4.
Clergy taken
away in Sacri-
ledge.

By the Statute of 1 E. 6. The benefice of the Clergy is taken away from such as steal any Goods out of any Church or Chappel. For the punishment of such as disturb the Minister in the Church whilst he is Reading Divine Service, or Arresting the Minister whilst he is attending Divine Service, see in the 11th Chapter before, and Stat. 50 E. 3. cap. 5. and 1 R. 2. cap. 15.

And so much for the Priviledges of Churches and Church-yards.

Offices of the
Church.
Kitchin 194.

The last thing I have to speak relating to Churches, is the Officers belonging to the same, which in time of Popery were many, as *Ostiarii*, *Lectores*, *Exorciste*, *Acolyti*, *Psalmiste*, *Cantores*, &c. He that minds to know the several Duties of all these Officers, or Orders, may satisfie himself in *Bellarmines* Disputations, or in *Gratian*, with the manner of their Ordinations.

De Clericis
lib. 1. cap. 13.

Distinct. 23.
cap.

Quorundam
Clericorum
& dist. 25.
perfectus.
Ostarius
may be taken
for a Clerk or
Sexton.
Church-War-
dens Office.

Amongst these the Church-Wardens, and Parish Clerk or Sexton, who perform several of these Offices are not reckoned, and those are now the only Officers of the Church of England, and of whom I am now to speak.

The Office of the Church-Wardens is to take care of the repair of the Church, and

and has the Ordering of the Bells, and Doct. & Stud.
 seats, and is to provide all Books, and ^{118.}
 Ornaments belonging to the Church, and
 in his custody, and in their charge are all
 the Goods of the Church, and they are
 to provide Bread and Wine for the Com-^{8 H. 5. 4.}
 munion; and to see there be a decent
 Communion Table, with a Table Cloath
 and Carpet, and Flagon, Plate, and
 Bowl of Silver, Gold, or Pewter, for
 the service of the Church, when the
 Communion is Administred, they are to
 make Levies, and raise Mony for the
 doing of all this in such manner as is
 before directed, and at the end of their
 Office they are to give an accompt of their ^{8 E. 4. 6.}
 receipts, and disbursements to the Pa-
 rishioners, and what remains in their
 hands upon such accompt, with all the
 Goods of the Church in their custodies,
 they are to deliver over to their Suc-
 cessors, there are many things belong to
 their Office, but so well known I need
 not mention them.

These Officers by a Canon made in ^{By whom to be}
 the time of King *James*, are to be cho-^{chosen.}
 sen by the Minister and Parishioners;
 but if they cannot agree of the per-
 sons, then the Parson, Vicar, or Cu-
 rate, is to chuse one, and the Parishio-
 ners the other; but where the Custom
 has been to chuse them all by the Pa-^{26 H. 8. 6.}
 rishioners, without the Minister, the ^{Rolls 2. 287. f.}
 Custom ^{50.}

Custom must be observed, notwithstanding the Canon.

*Side-Men their
Office.
can. 90.*

There were other Officers called Side Men, but they are almost laid aside, the Office is to assist the Church-Wardens in doing their Duties, and they were to take care that no body should loyter or talk in the Church-yard, or Church-porch, and to see that the Parishioners frequented the Church, &c.

*The Clerks Of-
fice.
Can. Jac. 91.*

The Clerk or Sexon is to be chosen by the Parson or Vicar, or in their absence by the Minister, who the Sunday after such Election, is by him that makes the Election to be declared, who is Elected.

*How to be
Elected.*

— The Party so Elected ought at least to be twenty years of Age, of honest Life and Conversation, and one that can Write, Read, and Sing; his Office is to assist the Minister at Prayers, and to attend him, and to keep the Church and Seats clean, and has the keeping of the Keys of the Church to that purpose, and is to Ring to Prayer, and to do many other things, which by Custom belong to his Office to do.

*Cro.' Car. 589.
Rolls 2. 286.
f. 42.*

But if such Parish Clerk have time out of mind been chosen by the Parishioners, he must be so still, notwithstanding the Canon.

And so much for Churches, I shall now proceed to the Chappels.

Chap-

Chappels in Latine *Cappelle*, about *chappel unde*
 which denomination I find great diver- *dicitur.*
 sity of Opinions amongst the Learned *Cowel*
 some conceiving it takes its name *a ca-* *Minshey*
piendo Laicos: others are of opinion they *Spelman.*
 took that name *a Capra*, beca se ancient- *Hoc verbo.*

ly they were covered with Goat Skins:
 others think they take their name *a cap-*
pe Sancti Martini, because anciently the
 Kings of France, when they went to the
 Wars carried that Cap along with them,
 which was kept under a Tent, and thence
 called *Capella*: others have thought it is
 taken for a Chest, or repository, wherein
 the relicks of Saints were preserved;

Amongst this variety of Opinions I shall
 beg the Readers pardon to put in my *Ella, in the*
 own amongst the rest, being not well sa- *end of a word*
 tisfied with any of these. A Chappel *signifying lit-*
 is a Church in a smaller character, and *tle, and cap.*
 therefore I imagine it might be called *of capio cora-*
ceive.

Capella from the littleness of its content, *So a Chappel*
 or capacity to receive persons, it differ- *is of little re-*
 ing nothing from a Church but in the *ceipt in respect*
 dimension, or content, and that the *of the Mother*
 Church is the Elder Sister. *Church.*

Of Chappels there are three sorts, *Division of*
 Free Chappels, Chappels of Ease, and *chappe.s.*
 Private Chappels.

What those Chappels were that were *Minshey.*
 called Free Chappels, I find likewise *Cowel in free*
 some difference of Opinions, for some *chappels.*
 have been of Opinion, that they were
 Chappels

Chappels founded in Parish Churches and endowed by the Founder, and made free to all People to come, and therefore called free Chappels; others were of Opinion, that they were Chappels built by the Kings of this Realm, or by their License, and exempted from the visitation of the Ordinary, others take them for donatives, and therefore called free Chappels, because they were freely given.

Stat. 1 E. 6.
cap. 14.

These free Chappels, whatsoever they were, were all given to the King in the first year of E. 6. except some few that are excepted in the Acts of Parliament by which they were given; or such as are founded by the King, or his License since the dissolution; for it is agreed on all hands, that the King may erect a free Chappel, and free it from the Jurisdiction of the Ordinary, or may License a Subject so to do.

*Chappels of
Ease, Parochial,
and not Parochial the difference.*

Chappels of Ease, some of them have parochial Rights to Christen, and Bury, and are therefore called Parochial Chappels, by way of distinction from others that have no such privilege, and these differ in nothing from Churches, but in the want of Rectories, and Indowments, the Mother being to be served before the Daughter.

Those Chappels of Ease, which are not Parochial cannot Bury, or Christen, but

but are only used for the ease of the Parishioners to hear the word of God read and preacht, and to join in Prayer.

Chappels have like Officers for the *Chappels how*
most part as Churches have, distinguished *to be repaired*
only in name, and these Chappels must *&c.*
be Consecrated by the Bishop as Churches
are, and the repairs must be made by Assessments on the Inhabitants and Landholders within the Chappelry in the same manner as for the repair of Churches, and are visitable by the Ordinary, and the like Appeals to the Ordinary for unequal Assessments; but all this must be intended of Ancient Chappels, and where this course hath been used; for if there be Land given for the repair of them, or any Land or Estate charged by prescription to the repairs of them, then the Custom must be observed.

But of new Chappels of ease there may be some question, whether the Ordinary can compel the Inhabitants to repair the same.

But when a number of People have for their ease joyned together, and erected a Chappel, and procured the Bishop to Consecrate it (which was the Original manner of erecting Churches.) it should seem in Reason that the Bishop should have the same power to compel the repair, as he has to visit it.

O

But

Co. 5. 63. 64. a.
Co. 8. 127.

*Who has the
Cure of Chap-
pels.*

* Rast. Entr.
Trespas in
dismes. 4. and
in Praemunire
in Rome 4.
Roll. 1. 110. a.
Co. 5. 72. b.
22 H. 6. 46. b.
Rast. Entr. 2. b.

*Offerings at
Chappels.
Othobon cap.
Gratia quæ.*

But I conceive there is no doubt, but
those of the Chappelry, or the Major
part of them may agree to make an
Assessment for the repair of such Chap-
pel, and agree that the Collector for the
fault of payment should distrain for it,
and I conceive such By-Law for a public
good made by the greater number shall
bind the rest,

The cure of Chappels of Ease in many
places is to be performed by those who
have the cure of Souls in the Parish; and
in some places they are indowed with
Land or Tithes, and in some places by
voluntary contributions. * And Land
Tithes may be appendant to a Chappel.
Whosoever by Law or custom is
bound to provide Chaplains for any such
Chappel, may be compelled to do it by
the Ecclesiastical Courts, or an Action
upon the Case lies against him at Com-
mon Law to recover Damppages for not
performing, but this must not be intended
of a publick Chappel.

The Offerings made at any Chappel
are to be rendred to the Mother Church,
but this must not be intended where by
Custom time out of mind the Chaplain
has had them, for there the Canon will
not bind, nor does the Canon extend to
Chappels of late erection, unless they be
with a *Salvo jure matris Ecclesie* tax
concessæ.

If the Patron of a Chappel presentive present to it by the name of a Church, and the Clerk by that presentment be instituted and inducted, hath lost the name of a Chappel, and gained the name of a Church; *Quere*, what other alteration is made thereby.

Publick Chappels annexed to Parish Churches are (as hath been said) to be repaired by the Parishioners as the Church is, but not if any other person be bound by custom to repair them.

And note, That a *Quere impedit* will lie of a Chappel.

In what Cases the Inhabitants of a Chappelry shall be freed from the repair of the Mother Church, see before in this Chapter.

Private Chappels are such as Noble Men, and other Religious and worthy Persons have at their own private charge, built in or near their own Houses, for them and their Families, to perform Religious duties in; these private Chappels, and their Ornaments are maintained at those Noble and Worthy Persons charge, to whom they belong; and Chaplains provided for them by themselves, with Honourable Pensions, and these anciently were all Consecrated by the Bishop of the Diocess, and ought still to be so, but I doubt many have been neglected of late time.

Church-yards,
&c.

2 Inst. 489.

Doct. & Stud.

118.

Chap. Quam-
vis lex naturæ.

2 Inst. 489. 1

The last thing I have to speak of relating to Churches, is the Church-yard in Latine *Cæmeterium*, from the Greek *Quasi dormitorium, quia mortui dicuntur dormire usq; ad resurrectionem*. It is the ground wherein the Church is erected the freehold thereof is in the Parson so that the Trees, Grass, &c. growing in it are his; but he may not cut down the Tree, but in especial Cases as hath been shewed elsewhere. The Fences are to be repaired at the charge of the Parsoners, or in such manner as by Custom has been used; and the Visitors in their Visitations are to inspect the repairs, and to compel the reparations, if need require; It is Consecrated Ground, and participates of all the Priviledges belonging to the Church beforementioned, and the Parishioners may here freely bury their Dead without contradiction, or paying any thing for breaking the Soil. It is not to be put to any prophane use, to have Swine kept in it, or muck heap laid in it, but kept decently, as a place dedicated to Gods Service.

C H A P.

CH A P. XIII.

The Thirteenth Chapter treats of Parsonages, Vicarages, Sine Cura's and Donatives, and of the Indowments of Vicarages, and how a Parsonage and Vicarage may be re-united, and many other things relating to Parsonages, Vicarages, and Sine Cura's.

A Parsonage or Rectory is a certain portion of Land, Tithes, and Offerings established by the Laws of this Kingdom for the maintenance of the Minister that hath the cure of Souls within the Parish where he is Rector, or Patron, and properly comprehends, *integra Ecclesiæ parochialis, cum omnibus suis juri-bus, prædiis, decimis, aliisque proventus in speciebus: alias vulgo dictum benefici-um.* *A Parsonage or Rectory, quid.* *Spelman's Gloss.* And sometimes it is taken *pro mansione, seu domicilio Rectoris.* *12.*

And though properly a Rectory or Parsonage doth consist of Glebe Land and Tithes with the Offerings, yet it may be a Rectory, though it have no Glebe but the Church and Church-yard, and in some places, as in London, and other great Towns and Cities there may

15 H. 7. 8. a. a.
21 H. 7. 21. b. a.
Edgar versus
Sorrel M. 5.
Car. B. R.

Ibid.

neither be Glebe nor Tithes but Annual payments and Offerings in lieu thereof, and by the grant of a Rectory all the Glebe Tithes and Offerings will pass.

Cap. Quoniam
autem verbo
5. q. marca-
rum.

A Vicarage is a Cantel or Portion of the Rectory set out by the Patron, Parson, and Ordinary, for the maintenance of a perpetual Vicar, who as Vicegerent of the Parson hath the Cure of the Souls within the Parish where he is Vicar; but a Vicarage may consist of Land or Tithes alone, or of Glebe, Tithe, and Offerings, or in an annual pension without Glebe or Tithes, and such Pensions have been limited by several Canons, first to five Marks, after it was extended to six Marks, and lastly to eight. But generally Vicarages are indowed with Glebe and Tithes.

Indowments before and within memory.

Of Indowments some are beyond time of memory, that is, so long ago that it is not known in what time or by what the same was made, and in such case it shall be presumed, that the Vicar was indowed with such share of the Rectory, Tithes, and Offerings, as the Vicar and his predecessors have enjoyed by all the time of the memory of any Man.

But if the Indowment it self be extant, then the Vicar must be content with such part of the Rectory as he is thereby indowed with.

But

But if these Indowments be ancient they shall be expounded according to the use since. *How to be expounded.*

And therefore if a Vicar were anciently in the time of H. 3. or before indowed *de decimis garbarum* arising in such a Village, Hamlet or place, and have by colour of this Indowment, as long as any body can remember, had the Tithe Hay, as well as Tithe Corn, of the same Villages, Hamlets and places, it shall be presumed that in those days Hay past by that name. *Rolls 2. 335. 7.*

So if a Vicar were anciently indowed *De minutis decimis*, and have by colour of this Indowment by all the time of memory had the Tithe of some small parcel of Wood; although Tithe of Wood in its own nature be accounted a great Tithe, yet the Vicar shall enjoy the Tithe of this Wood by reason of the usage. *Rolls 2. 335. 8. Reynells. vers. Green M. 10. Jac. B. R.*

If a Vicarage were anciently indowed, *de Alteragio*, which properly signifies the Offerings at the Alter; yet if the Vicar by colour of this Indowment by all the time of memory have enjoyed the small Tithes, he shall have them still. *Hetley 70. 135*

If a Vicar be indowed of all the Tithes arising in the Parish (except Corn) and certain Fields, or Grounds in the Parish, have time out of minde been sown with Corn, till of late they have been planted *Rolls 2. 234. 7. 335. 4. Owen. 74.*

with Hops, or sown with Saffron, Woad Rape, &c. the Vicar shall have the Tithes and not the Parson.

Rols 2 335.
2. and 3.
Cro. Eliz. 578.
More 457.
Hetley 135.
Winch. 70.

And if the Vicar be indowed of all the white Tithes, or small Tithes arising, renewing, &c. within the Parish, he shall not by this Indowment have the small Tithes arising upon the Glebe Lands of the Rectory, though they should afterwards be severed from the Rectory.

*Vicar shall not
pay Tithes of
the Glebe.
Crompton's
Case.*

And it hath been resolved that upon a general Indowment of a Vicarage, the Vicar shall not pay the Tithes of his Glebe Land to the Parson.

P. 7. Car. 1. B. R.
*Matter upon
indowments.
Rolls 2. 335. 5.*

If the Vicar be indowed of all the small Tithes, and after Lands that have been sown with Corn, or mowed for Hay-time out of mind, whereof the Parson hath had the Tithe, and these Lands are since converted to Hopyards, or sown with Saffron, Woad, Rape, &c. the Vicar shall have the Tithes, and not the Parson; for the Indowment goes not to the Lands, but the Tithes.

Rolls 2. 335. 6.

If a Vicar be indowed of all the Tithes arising upon a Manor, he shall by such Indowment have not only the Tithes of the Demesne, and Tenements, but also of the Freeholders Lands within the Mannor.

The Parsonage of *Luffenham* in *Liechesterhire* the 22 of E. 4. was appropriated

granted to the Abby of *Sully*, upon condition that a Vicarage should be indowed: a Vicar from time to time ever since was presented and paid first-fruits, but no indowment now extant, it shall now be intended that it was indowed.

The indowments of Vicarages have been always favoured at Law, the Vicars for the most part having the Cure of Souls.

Indowments of Vicarages were for ^{upon what of} the most part made upon the appropriation ^{of Vicarages were in-} of Churches to Religious Houses, ^{dowed.} and upon the appropriation they did usually assign some small portion of the Rectory to maintain a perpetual Vicar to serve the Cure, and took the rest of the Rectory to the use of Abbies, &c. But in process of time the Abbots, &c. grew better Husbands, and took the whole Rectories to themselves, without indowing of any Vicar, and served the cures by their own Monks and Fryers, by which means Hospitality was neglected, the Churches and Rectory Houses dilapidated, the Minister often wanting, whereupon the Statute of 15 R. 2. and ^{15 R. 2. ca. 6.} 4 H. 4. were made, for the making void ^{4 H. 4. cap. 18.} such Appropriations as were made without competent indowment of Vicarages, and likewise against the appropriating of Vicarages; but Vicarages indowed before those Statutes, might notwithstanding

Bretton vers. Ward. ding those Statutes have been appropriat-
ted.

M. 17 Jac. B.R.

Sine Cura's

now introduced.

But though for the most part Vicarages were indowed upon appropriations; yet sometimes the Parsons, Patrons and Ordinaries, did indow Vicarages without any appropriation of the Parsonage: and if the Vicar were charged upon such indowment with the cure, as for the most part they were, then the Parsonage became a *Sine Cura*, of which more hereafter.

How an Improp-
riation may be
restored.

17 E. 3. 51. b. r.

11 H. 6. 18. b. r.

39 E. 3. 33. a. r.

19 E. 2. *Quare*

Imp. 178.

Rolls. 2. 336.

E. 5.

14 E. 3. cap. 16.

Freehold of the

Vicarage in

whom.

6 E. 3. 50. a. r.

3 E. 3. 17. b. r.

9 E. 3. 8. b. r.

The Parson or Appropriator is Patron of the Vicarage of common right, yet nevertheless a Lay Man might have been Patron of a Vicarage as well as the Parson, and so might the King, and the Advowson of a Vicarage may be appendant to a Manor by prescription, and it shall be intended is was granted by the Parson before the time of memory.

It should seem that at the Common Law before the Statute of 14 E. 3. the Freehold of the Vicarage remained in the Parson, and that the *Precipe* was to be brought against the Parson, and before that Statute the Vicar could not have had a *Juris utrum*, and he shall still have aid of the Patron, Parson, and Ordinary.

And as the Vicarage was part, and taken out of the Parsonage, so it may be again re-united.

For

For if the Profits of the Parsonage, or Vicarage, fall into such decay, that either of them by it self is not sufficient to maintain a Parson, and Vicar, they ought again to be re-united.

How a Vicarage may be re-united.

31 H. 6. 14. a.
40 E. 3. 28. b.

And the Parson and Ordinary, in the time of the vacation of the Vicarage, may re-unite the Vicarage to the Parsonage.

Rolls 2. 337.
h. 1.

And if a Vicarage so fall into decay, that the same is not sufficient, competently to maintain a Vicar, the Bishop may judicially compel the Parson to enlarge the Vicarage, or Appropriator; but by *Catibby* 2 E. 4. 24. b. such augmentation must be made by the Bishop, Patron and Ordinary.

Where a Vicarage may be enlarged, and how.

Rolls 2. 337.
h. 2.

It hath been resolved that where there is a Parsonage and Vicarage indowed, that the Bishop in the vacation may dissolve the Vicarage: but if the Parsonage be impropriated, the Bishop cannot dissolve the Vicarage, for upon a dissolution the cure must revert, which it cannot into Lay hands, for where there is a Parsonage, and Vicarage, they both have the Cure, the Parson *habitualiter*, the Vicar *actualiter*, per Noy.

How a Vicarage may be dissolved.

Parry versus Bancks 12.
Jac. Scac.

If an Impropiator, or Appropriator, Patron or Vicarage, by agreement between him and the Ordinary presents to the Parsonage, by this they are re-united, and it should seem that a bare pre-

How the Rectory and Vicarage may be re-united.

44 Aff. p. 37.
2 H. 6. 33.

11 H. 6. 18. b. presentation, without any agreement at all, disappropriates the Parsonage, and re-unites the Vicarage.

Charge falls on the Vicar, Parson is to free it.

If any charge fall upon the Vicarage, it ought to be repaired by the Parson.

31 H. 6. 14. a. And so much of Parsonages and Vicarages.

A Donative, quid. More 765. Cro. Jac. 63. Yelverton 60.

A Donative is a Spiritual preferment in the Church, be it Church, Chappel or Vicarage, which is in the free gift or collation of the Patron without making any presentation to the Bishop: neither needeth such Clergy Man have any Admission, Institution, or Induction, by any Mandate from the Bishop, or other, but may by the Patron, or by any other authorized by the Patron, be put into possession; and such Incumbent is free from the visitation of the Bishop, or any other, than his Patron or his Commissioners, and by consequence freed from procurations.

1 Inst. 334. a.

* 8 Aff. p. 29. *A Parish Church may be a Donative.*

* And if the Bishop should take upon him to visit a Donative, and deprive the Incumbent, he runs himself into the danger of a *Premunire*.

Rolls 2 R. 1.

1 Inst. 344. a.

6 H. 7. 14. a.

contra Keble.

* Yelverton

61. F. N. B. 35.

c. f. 1 Inst. 344.

a.

And note, that a Parish Church may be a Donative, and have Cure of Souls: and such Donatives cannot lapse, unless by special Agreement at the Foundation, but the Ordinary may compel the Patron to collate; * but the Patron cannot collate a Lay Man, as some have thought, but

but a Spiritual person in holy Orders; but if the Patron once present to a Donative, and the Clerk upon such presentation be admitted, instituted, and inducted, it is thereby for ever after become presentative, and shall be no longer esteemed, or used, as a Donative: but if a stranger that has no right presents to a Donative, though his Clerk be admitted, instituted, and inducted; yet that shall not alter the nature of the Living.

If the King found a Church, and exempt it from the visitation of the Ordinary, it is a Donative, and the King shall visit by his Chancellor.

So it is, if the King found a Church or Chappel, without any special words.

And the King may give Licence to a Subject to erect or found a Church or Chapel Donative, and exempt it from the Ordinaries visitation, and the Patron may in such case visit by his own Commissioners.

And a *Quare Impedit* may be brought of a Donative, *quod permittat ipsum presentare ad Ecclesiam*; but the declaration in such case must be special.

And Donatives are within the Statute against Symony, and where they have cure of Souls, they are likewise within the Statute against pluralities.

There is another sort of Church Livings that are commonly called *Sine Cura's*,

Cro Jac. 63.

How a Donative may be made presentative.

1 Inst. 344. a.

F. N. B. 35. c.

1 Inst. 344. a.

The King may Found a Donative, or Licence a Subject to do it.

1 Inst. 344. a.

A Quare Imp. lies of a Donative.

1 Inst. 344. a.

Yelverton 61.

F. N. B. 35. c.

Donatives within the Statute of Symony, and Pluralities.

Sine Cura's quid.

ra's,

*Living's In-
compatible.
Quare:*

ra's, these are such Parsonages as have Vicars indowed with Cure of Souls, as has been said: but these are not within the Statute of Pluralities, nor as these Livings said to be incompatible; for those Livings are only said to be incompatible that have Cure of Souls; and therefore I conceive there needs no dispensation, or faculty, for the taking one of these *Sine Cura's*, though the party had another Living before with Cure of Souls; but herein the party is best to be advised by some learned Canonist, but by the Statute there needs no dispensation.

And so much for Parsonages, Vicarages, Donatives, and *Sine Cura's*: and for other Church preferments, I shall refer the Reader to Mr. Hughes learned Treatise of the Parsons Law, they being above my undertaking.

CHAP

CHAP. XIV.

The Fourteenth Chapter shews, what Resignations and Permutations are, and in what manner they may be made, and other matters relating to them.

A Resignation is where a Parson, Vicar, or other beneficed Clergy Man, voluntarily gives up, and surrenders his charge and preferment to those from whom he received the same, which may be absolutely, or upon condition.

A Resignation must regularly be made to the next immediate Ordinary, and not to the Superior.

A Resignation may be made by, or to a Proctor, but a Church is not void by any such Resignation in absence, till the same be presented, and accepted by the Ordinary: or a Resignation may be made in the presence of a publick notary in the absence of the Bishop, and after it is presented and accepted, it is as good as though the Bishop had been present.

And though regularly Resignations ought to be made to the Bishop from whom the Clerk upon his admission receives

Resignation, quid.

To whom.
Dyer 294. b.

To or by a Proctor.
Noy 147.

Gaytons Case.
P. 34 El. C. B.
Resignation may be to the King.

Dyer 294. p.
56. Pl. 498. a.

ceives his charge and cure, yet a resignation to the King as supreme Ordinar hath been held good.

Words of Resignation.

Dyer 294. p. re.

55.

To whom a Donative is to be resigned.

Cro. Jac. 63.

Yelverton. 60.

1 Inst. 344. a.

Cro. Jac. 63.

Yelverton 60.

Resignation in

presence of a

publick notary.

Semble resolu-

tion.

P. 3 Eliz. 10.

343. C. B.

The usual words of a Resignation are *renuntiare, cedere, remittere, & resignare*.

Donatives must be resigned to the Patron, and not to the Ordinary; for the Clerk in that Case received his Living immediately from the Patron.

And if there be two Patrons of a Donative, and the Incumbent resign to one of them, it is good for the whole.

In the Case of one Gayton, P. 34 Eliz. in the Common Pleas, in a *Quare impedis* for the Church of little Cressington in Norfolk, a Parson resigned his benefice in the presence of a publick Notary, *sponte, pure, & simpliciter*, to the use of two upon condition, *quod si aliqui eorum non admissi fuer. & regiam possessionem Ecclesie predictae adipisci non valeant infra sex menses, quod tunc sit*.

And in this Case it was very much disputed, whether a Resignation could be upon condition; but at last with advisement with the Civilians it was resolved that a Resignation might be upon condition.

Permutations, quid.

Permutations, or Exchanges, are where two Clergy Men agree to exchange their Livings, and after they make such agreement, and put it in Writing, they

they make mutual resignations upon condition in the form following. Regist. 306.b.2

In Dei nomine Amen. Ego H. de W. A Resignation upon a Permutation.
 Rector Ecclesie de N. Lincoln. Dioces. Regist. Jud.
 volens ipsam Ecclesiam meam cum Eccle-
 sia de P. dicte Dioc. cujus Rector existit
 Dominus de W. certis iustis, & legitimis
 de causis sine dolo & fraude canonice per-
 mutare, ipsam Ecclesiam meam ex causa
 permutationis huiusmodi & non alio mo-
 do, in sacras manus venerabilis in Christo
 patris Domini T. Dei gratia Lincoln. E-
 piscopi resigno, supplicans humiliter & de-
 ro, ut H. de huiusmodi causa permuta-
 tionis ipsam resignationem sic factam &
 non aliter velitis admittere, & negotium
 permutationis huiusmodi quatenus ad vos
 attinet fideliter expedire. Et protestor ex-
 presse in his scriptis, quod si dicta per-
 mutatio debitum non sortiatur effectum,
 quod huiusmodi mea resignatio predicta
 pro nullo penitus habeatur.

To which is added an Instrument containing a protestation in the form following.

*In Dei nomine Amen. Ego H. de W. T^{oe} Protestati-
 on.
 nunc Rector Ecclesie de P. Lincoln. Dioces.
 & prius Rector Ecclesie de N. dicte Dioces.
 protestor, dico & allego in his scriptis, quod
 si contingat quod huiusmodi Ecclesia mea de
 P. absq; dolo & culpa meis in hac parte a
 P me*

me aliquo modo evincatur, volo & intendo ad dictam Ecclesiam de N. absq; aliqua difficultate libere & licite redire, & eam habere juxta Canonicas sanctiones, & protestor insuper quod non intendo nec volo hujusmodi protestatione seu effectu ejusdem recedere aliquo modo in futuro, sed eidem protestationi & contentis in eadem, volo & intendo in futuris temporibus firmiter adherere, juris beneficio in omnibus semper salvo, &c.

What the effect of this protestation is, I must leave to the Civilians to determine, however the intent of the thing agrees well enough with the reason of the Common Law; for at the Common Law if a man exchange Lands, and the Lands he receives in exchange be evicted, he may repair to his own Lands, and re-enter upon them.

13 E. 4. 3. b.
Co. 4. 112. b.

Permutation void, quia one dyed before induction.

45 E. 3. F.
exchange 1c.
Co. 2. 74. b.
Perkins Title exchange.

And it has been resolved, that where two Parsons of two several Churches by an Instrument in Writing agreed to permute their Churches by way of exchange, and severally resigned them into the hands of the Ordinary to that intent, and the several Patrons presented according to the intent of the exchange, and the one Parson was admitted, instituted, and inducted; and the other was admitted and instituted, but dyed before induction, that though the induction of the other was absolute, yet this was so directed by

by the precedent agreement, which was by way of exchange, which ought to be executed on both parts in the life of the parties, and the induction could not be made upon condition; therefore for this reason it was all resolved to be void.

And so much for Resignations and Permutations, with which I will end this first part of my discourse.

Gloria Deo omnipotenti.
Amen.

FINIS.

And to the Lord for His mercy and
 forgiveness, who will not
 be angry with me forever.
 And to the Lord for His mercy and
 forgiveness, who will not
 be angry with me forever.
 And to the Lord for His mercy and
 forgiveness, who will not
 be angry with me forever.

FINIS

THE
Second Part:
BEING THE
L A W
OF
TITHES or TITHING.

Shewing in what manner all manner
of Tithes, Offerings, Mortuaries, and all
other Church Duties are to be paid, and in
what Courts and manner they may be re-
covered, and to what charges they are
Subje&.

With many other things fit for all People,
but especiall all Clergy-men, to know.

Written by Sir SYMON DEGGE Kt;

L O N D O N,

Printed *Anno Domini* MDCLXXX.

Second Part:

BEINQ THE

W A L

UNITED STATES OF AMERICA

To his Worthy and Re-
verend Son in Law
Mr. *Anthony Trollop*,
Rector of *Norbury* in
Derbyshire.

Dear Son,

I*T is now above thirty years, since the Tithing Table published many years ago came to my hand; and upon perusal thereof finding that the Common Laws and Canon Laws differed in many things, I thought it would be a work grateful to the Clergy, and useful to others, to publish something in order to the reconciling of them: To which end I had gathered together some materials; but the War coming immediately on, and after that the Ecclesiastical Courts being laid aside, and other Courses found out for the reco-*

very of Tithes, I desisted the further Prosecution of that design, until it was revived at your Request seconded by some other Reverend Divines, where upon looking up my old Notes, and adding such Judgments and Resolutions, that I have since come to the knowledge of, the whole is reduced to the form I here present it to you; you have most Right to it, and I heartily wish it may be of as great Service and advantage to you, and all the Reverend Clergy, as is desired by him that is

Your affectionate

loving Father

S. D.

T H E

THE
LAW
 OF
 TITHES or TITHING.

CHAP. I.

*The first Chapter shews, what
 Tithes are, the several sorts and
 kinds thereof, and in what man-
 ner due.*



AVING in the former part of
 this discourse shewed the
 worthy & Reverend Cler-
 gy-Men in what manner
 they may lawfully and
 justifiably attain to such preferments in the
 Church as they are capable of, and in
 what manner they may avoid all the pe-
 rils

rills and dangers that attend the Beneficed Clergy-men. It rests now that I shew them what profits they may justly challenge to belong to their Church-preferments, and in what manner to be paid, and how to be recoverd if need require. And first of Tithes, which the Canonists define to be,

Definition.

A tenth part or portion of Increase commanded to be paid to the Sons of Levi for their Ministry, wherein they served in the Tabernacle.

Or, as some others define them, they are,

Omnium bonorum licite questitorum quota pars Deo Divina institutione debita.

But the Common Lawyers define them to be.

Co. II. 13. b.

An Ecclesiastical Inheritance Collateral to the Estate of the Land, and of their own proper Nature due only to an Ecclesiastical Person by the Ecclesiastical Laws.

And for that reason no unity of possession can extinct or suspend them; but they, notwithstanding such unity, remain in esse, and may be demised or granted notwithstanding any such unity: but may more properly in my judgment be defined to be.

A tenth part, or some other thing in lieu thereof, of all the Increase yearly arising forth of the profits of the Lands
and

and Stock, or raised by the industry of the Parishioner, and properly due to the Clergy that have the Cure of the Souls in the Parish where they arise.

And by some Canonists Tithes have been divided only into two kinds, that is, Predial and Personal: and in this manner of division they comprehend all manner of Tithes, that arise either immediately or mediately from the Land, under the name of Predial Tithes: which they again distinguish into Predial mediate and immediate; under which they comprehend the Tithes of Corn, Hay, Wood, Herbs, and all other things, that either come from the ground by manufacture, or of its own Nature; and under the name of Tithes Predial mediate is comprehended the Tithes of all manner of Cattel and other things that receive their nourishment from the ground.

Division.

Doct. & Stud.

l. 2. c. 55.

p. 168. b.

Lindwood c.

Quoniam propter verbis dividend. est decima.

But Tithes by the Common Lawyers (and which division I shall observe in my discourse) are divided into Predial, Mixt and Personal: and according to this division all Tithes that arise from the ground, as before is said, immediately, are only accounted to be Predial: and those that arise from Cattel and other things, that receive their nourishment immediately from the ground; they call Mixt; and those that arise from the Labour and industry of Man alone, Personal.

2 Inst. 649.

Rolls 1. 635. a.

Lindwood c.

Quoniam propter verbis talibus decimis.

Tithes

Tithes again both by the Common Lawyers and Cannonists are divided into great Tithes, in Latine *maiores seu grosse decime*; and into small Tithes, in Latine *minores* or *minute decime*. And in this division Corn, Hay and Wood are all accounted gross or great Tithes. But there has been some question whether Tithe Wood should be accounted a great or minute Tithe, and resolved that if a Vicar be only indowed with the small Tithes, and have by reason thereof always had Tithe Wood, that in such Case it shall be accounted a small Tithe, otherwise it is to be accounted amongst the great Tithes.

Rolls 1. 643.

v. 2.

2 Bullst. 27.

Cro. El. 467.

Hutton 77.

Cro. Car. 28.

Rolls 1. 643.

v. 3.

But all manner of Tithes of Gardens Herbs, Roots, Fruit, Saffron, Woad, whether sowed in Fields or Gardens, Flax, Hemp, Hops, Rape, and all other Predial Personal and Mixt Tithes are accounted *inter minutas decimas*; but in *Udal's* and *Tindal's Case Hutton 77.* in some cases Hops, Woad, &c. may be great Tithes in places where they are much sowed.

Lindwood c.

Quoniam propter verb. talibus decimis.

And herein the Custome of England is kind to the poor Vicars, making many things to be allowed for Minute Tithes that are not so in others.

I have been the longer in this division of Tithes between great Tithes and small Tithes, because many Vicarages are indowed with the small Tithes only, and

in

In some old Indowments you will find the word *Alteragium*, which by Custom may as well comprehend the small Tithes; as such profits as arise from the Altar.

Now perhaps it may be expected, I should say something to satisfie the Reader by what Law Tithes became due under the Gospel. But in that point I find so great a difference between the Canonists, School-men and Divines, that it would be a great presumption in me to take upon me to determine the point, the rather because I am informed by a reverend learned and grave Divine, that the learned *Selden* retracted his Opinion therein; and what it was, you may see in the places noted in the Margent: But so far as I have observed, they all agree in this, That Tithes *quoad sustentationem Cleri vel ministrorum Dei* are *jure divino*; So that the sole question amongst all these learned men is about the quantity, or *quoad pars*. But be they due *jure divino*, *jure Ecclesiastico*, or *jure humano*, I conceive the difference cannot be great, since, as it must necessarily be confessed, they have been given and consecrated *Deo & sanctæ Ecclesiæ*; and so being dedicated to God and his Service (in my poor Judgment) the taking them away from the proper use and end cannot be less sacrilegious, than if they were without dispute *jure divino*; I shall not therefore stuff this pre-

Spelm. Gloss.
28 Cro. El.
578.
Hetley 135.
Winch 70.

Quo Jure debet.

Helyns Hist.
of Presbytery.
391.
Seld. Hist. de-
cim. cap. 5.
Sect. 4. cap. 7.
And in the end
of the Epistle to
the Reader.
The Question.

Doct. & Stud.
l. 2. cap. 55. f.
164. b.
165. a.

sent

sent Discourse with the Arguments of any side; but shall leave the learned to their own conceits, it serving my purpose that they be due by any Law, Divine, Humane, or Ecclesiastical: My next examination shall be to whom they are due.

CHAP. II.

The second Chapter shews to whom Tithes are due, and by whom to be paid.

To whom Tithes are due to be paid.

HAVING shewed in the former Chapter what Tithes are, and the several kinds thereof, I shall in the next place shew to whom the same are due to be paid.

Seldens Hist.
decim 178,
&c.
Tho. Aq. Sum.
20. 22. q. 88.
art. 3. conclusi-
ons.

That there were Infeudations of Tithes, before the parochial Rights were settled, is without dispute both here in England, and in other Christian Kingdoms and Common-wealths: in which particular the curious may satisfy themselves in Mr. Selden's History of Tithes, and other Authors. And it is more clear, that before the time that the parochial Rights of Tithes were settled, that the Owners of Lands might grant their Tithes to any Ecclesiastical or Religious persons

persons (a multitude of Precedents whereof the Reader for his satisfaction may find in the *Monasticon Anglicanum* of Mr. Dugdale :) so that by this means the whole Tithes of some Parishes, and divers great portions out of other Parishes, were granted to Abbots, Priors, &c. And some to the Parsons and Rectors of other Parishes ; which is the reason, that at this day there is several portions of Tithes held from the Parish Churches by Impropiators and the Rectors of other Parish Churches.

When the parochial Right of Tithes ^{when the Parochial Right of Tithes first begun.} was first settled, there hath been (as should seem) a vulgar Error: for 'tis frequently said in our Common Law Books, that before the general Council of Lateran, which was held 1179. That every one was at Liberty to give his Tithes to what Spiritual Ecclesiastical or Religious Person he pleased ; but that by that Council the Parochial Right of them was settled. Neither was this an Error of the Common Lawyers only, for Mr. Lindwood a learned Doctor of the Civil and Canon Laws, that lived in the time of H. 5. about two hundred and fifty years ago, tells us, that

*Bene potuerunt Laici decimas in seu-
dam retinere, & eas alteri Ecclesie dare
ante concilium Latarenense, non tamen* Lindwood c.
locat. & con-
duct. verb.
portion.
post, &c.

But

V. m. f. w.
226.

Seldens Hist.
Decim. 231.
2 Inst. 641.

But there is no Canon in that Council to be found, whereby the Parochial Right of Tithes was settled, nor was the Parochial Right of Tithes settled till the year 1200; and then not by any Canon, but by a decretal Epistle of Pope Innocent the third, a Brief of which Epistle here follows, as I find it in Mr. Seldens History of Tithes, and in Sir Edward Cooks Institutes.

Innocent 3.
Epist. Decret.
l. 2. p. 452.
Edit colen.
Seldens Hist.
of Tithes 231.

Innocent 3.
tells us in his
Epistles, that
Tithes are due
to the Parish
Priests de com-
muni jure,
Vide Decretal.
Gregory li. 3.
de decimis ca.
30. Cum in
tua diocesi. &
ibid. ca. 29.
Cum contin-
gat.

Pervinit ad audientiam nostram, quod multi in Diocesi tua Decimas suas integras vel duas partes ipsarum non illis Ecclesiis in quarum Parochiis habitant, vel ubi parochia habent, & a quibus Ecclesiastica percipiunt Sacramenta, persolvunt; sed aliis pro sua distribuunt voluntate: Cum igitur inconveniens esse videatur & ratione dissimile, ut Ecclesie, que Spiritalia seminant, metere non debeant a suis Parochianis temporalia, & habere, Fratritati vae (being directed to the Archbishop of Canterbury) auctoritate presentium indulgemus, ut liceat tibi super hoc, non obstante contradictione vel appellatione cujuslibet seu consuetudine hactenus observata, quod canonicum fuerit ordinare, & facere quod statueris per Censuram Ecclesiasticam firmiter observari: Nulli ergo, &c. Confirmationis, &c. Datum Lateran. 2 Nonas Julii.

I must acknowledg I give the Reader this a little imperfect for want of the Original,

Original: and, it was Sir *Edward Cokes* Case also; for I perceive he borrowed his from *Mr. Selden*.

But some have fancied (and perhaps not without reason; for this seems not to be a general Decree, but a particular Instruction to the Archbishop of *Canterbury*) that the Parochial Right of Tithes was not generally settled of long after, held under *Gregory* the 10. but I do not find any such Canon in that Council, vide *Seldensis* that is, by a Canon made in the Council Hist. of *Tithes*. of *Lyons*, which was in the year of our ¹⁴⁷⁴ Lord 1274. in which Council, it is said, there is a Canon for the settling the Parochial Right of Tithes. But whether that were the Original, or a Confirmation of some other Decree or Council, I dare not take upon me to judge: but certain it is, that about this Century the Parochial Right of Tithes was settled in general. But though this decretal Epistle of *Pope Innocent* the Third be not general, yet it was Obligatory as to the Province of *Canterbury*; so that in that Province the Parochial Right of Tithes may take its date from the time of that decretal Epistle, which was as above is said, in the year 1200.

Mr. Doctor Godolphin in his *Repertorium Canonicum* seems not satisfied, that it is a vulgar Error in our books, that before the Council of *Lateran*, every one ^{pag. 342.} was

Q

was at Liberty to give his Tithes to what Spirituall or Religious Person he pleased, and to prove a settlement of a Parochial Right of Tithes by a Council of *Lateran* he cites a Canon made by *Innocent* the Third in the second Council of *Lateran* held in the year of our Lord 1122. 60 years before the Council held under *Alexander* the third 1179. or as some have it 1180. where he says it was decreed that the Religious Persons, *videlicet* the Cisterciens, Hospitalers, Templers and those of *St. John* of *Jerusalem*, which by the Popes *Paschal* and *Adrian* were exempted from payment of Tithes, should pay the same to the Parochial Incumbent, whereby a Parochial Right of Tithes was settled by a *Lateran* Council as he concludes.

But I wonder the Doctor should mistake himself so much, for first there was no *Lateran* Council in the year 1120, and he himself in his Catalogue of the Councils mentions none to be held that year, but assigns the second *Lateran* Council to be held in the year 1131. wherein the Doctor is again mistaken, for the second *Lateran* Council that is not reckoned amongst the general Councils, was held under *Paschal* the second 1122. And the second general Council held in the *Lateran*, was held under *Innocent* the second, Anno 1139. but neither of these Coun-

Councils etc. any Acts to be produced; besides Pope Innocent the Third entered not upon the Papacy till 1199. and so could hold no Councils 1201.

But I presume the Doctor meant the Council of Lateran held under Innocent the third 1215. in which there is a Canon something like that the Doctor ment-
ions for by that Council it is decreed That the Cistercians and all other orders privileged from the payment of Tithes (without enumerating any more of the Orders) should pay Tithes of such Lands, as they should purchase after that Council, although they held them in their own proper hands; *Ecclesiis quibus ratione predarum antea solvebantur, nisi cum ipsi*

fu Ecclesiis aliter duxerint componendum: But this can settle no Parochial Right, for it is only that the Tithes shall be payd to the Churches, *quibus antea solvebantur*. And that the Parochial Right of Tithes was settled before that Council appears clearly by the very next Canon of that Council: For there being complaints made in that Council that divers Clerks as well Regular as Secular upon grants and leases of their Lands, took Conventions of their Grantees and Tenants to pay their Tithes to the Grantors in preference of the Parish Priests, it was there-
fore decreed, *quod quicquid fuerit occasione hujusmodi pacti preceptum Ecclesie parochie*

Ca. 53. 11. 3. tit. 36. cap. 34.

Decret. Greg. li. 3. tit. 36. cap. 34.

Can. 55.

ali reddatur, this word *reddatur* proves sufficiently that the parochial Right was settled before that time, and Pope Innocent the Third in several of his Epistles declares that they are due to the Parish Priests *de communi jure*.

Greg. Decret.
li. 3. de decim.
ca. 30. cum
tua diocesi. &
ibid. cap. 19.
cum contingat.

And that the parochial Right of Tithes was not settled by any general Council but by a Papal constitution appears clearly by what Sir Robert Parmag says, who lived within a 100 years of this time, and was after chief Justice of the Common Pleas, who could not be ignorant how the parochial Right of Tithes was settled, and he says that in ancient time before a new constitution made by the Pope, the Patron of a Church might grant Tithes within his Parish to an other Parish.

7 E. 3. 5. a.

Nota.

But whether the parochial Right of Tithes was settled the one way or the other, it seems that all former grants were nullified, or otherwise the constitution had wrought small effect to the end it was designed, the greatest part of the Tithes being before that time granted to Monasteries, as may be observed in the *Monasticon Anglicanum*.

But notwithstanding this Constitution many of the Abbots held out against the Parish Priests, who durst not or were not able to contest them, and after claiming the Tithes by prescription, that is to say by forty years possession, which is a prescription

V. Supr. 224.

Exemption allowed by the Ecclesiastical Courts, and that's the reason that many portions of Tithes are at this day held by Impropriators that had been gained by the Abbots by such prescriptions and not by their ancient grants, and by this means they got their prescriptions *de non decimando*: for the Canon Law does allow one Clergy man to prescribe against another, but not a Lay man by any means to the prejudice of the Church. But if a Clergy man Secular or Regular continue to have the possession of a portion of Tithes in another Parish quietly forty years, this shall make him a good title against the proper Incumbent, and the same Law holds *de non decimando*: for if a Clergy man Religious, Secular or Regular hold any Land forty years together Tithe free, he shall hold Tithe free forever; but if a Lay man hold Lands Tithe free a thousand years, it avails him nothing by that Law.

But after the parochial Right of Tithes was settled, it is clear that no Lay man was capable of Tithes in permanency, but in particular Cases; till the Statutes, by which the Monasteries and Religious Houses were dissolved, enabled them; and in some special Cases Lay men were capable of Tithes in permanency, as in the Case of Pigot and Hoven cited in the Bishop of Winchester's Case: where the

Greg. Decret.
ll. 2. tit. 6.

cap. 6. ad au-
res nostras.

ibid. cap. 7.
causam quæ
&c.

Selden. Hist.
decim. 398.

and in his Re-
view 478.

Co. 2 44. a.
Lay men capa-
ble of Tithes

in Permanency.

Co. 2 44. a.

Case is put, that the Lord of a Mannor, and all those whose Estate he had in the Mannor time out of mind, had paid the Parson of the said which Parish the Mannor lay) for the time being a certain sum for the maintenance of Divine Service in consideration of all Tithes arising within the said Mannor, and the consideration thereof he, and all those whose Estates he had in the said Mannor by the time aforesaid, had and enjoyed all the Tithes arising in the said Mannor and in this Case it was adjudged, that the Lord of the Mannor might have the Tithes in permannity, and sue for the same in the Spiritual Court, but a man cannot claim Tithes generally as part of, or belonging to a Mannor.

Lay-men capable of Tithes in Permannity by the Statutes of the dissolution of Abbeyes.

But since the several Statutes made in the dissolution of Monasteries, that Tithes which were appropriated to Religious Houses dissolved are become Lay-Fee, and any Lay-men by the laws of this Realm are capable of them in permannity, and may sue for the same in the Spiritual Court.

All the Tithes belong to the Rector, prima facie. Portions by Prescription. 14 H. 4. 17. 44 A. 1. p. 24. Rolls 1. 657. 00

But since the parsonial Right of Tithes was settled *prima facie*, all Tithes appropriated belong to the Rector of the Parish Church wherein they arise notwithstanding the Parson of one Parish may prescribe to have a Portion of Tithes in the Parish of another, and so might Abbots.

Abbots, Priors, and other Religious Persons prescribe to have portions of Tithes in Parishes, whereof they had not the Advowsons, and by consequence the Rectors from the Crown, and the Impropriators may claim the same by prescriptions in the Abbots, Priors, &c. and the usage since the dissolution will serve to prove the prescription and usage in the Abbots, &c. that they held the same for time out of mind. But no Lay-man at this day is capable of Tithes in Pernancy, but under the state of dissolution unless by a grant by the Bishop, Parson and Patron made before the disabling Statutes.

Seldens Hist. of Tithes 161.
How prescriptions are to be proved.
Seldens Hist. decim. 364.
290.
Selden 399.

As for extra-parochial Tithes, there has been some differing Opinions. Sir William Herle was of Opinion, that they belonged to the Bishop of the Diocese, as general Parson of his whole Diocese, grounding his Opinion, as it should seem, upon the Canon Law: But there was never any such Canon received or approved in this Kingdom.

Extra-parochial Tithes.
7 E. 3.
Seldens Hist. decim. 108.

But it hath been resolved both in Parliament, and by several Judgments at Common Law, that all extra-parochial Tithes belong to the King, who is a mixt Person, and capable of Tithes at the Common Law in pernancy.

21 Aff. 75.
2 Inst. 647.
Rolls 1. 637.
o.p. Seld. hist. decim. 365.

Now having showed in general who is capable of Tithes in pernancy at this day,

In particular
Cases to whom
Tithes are due.

Cro. El. 161.

Against the
Parsons own
Lease.

Owen 39.

Portman vers.

Hind. M. 31. &

32 El. B. R.

Co. II. 13. b.

Dyer 43. p. 22.

est Quere.

Hetley 31.

Against his
Feoffment.

Co. I. 111. a.

Co. II. 13. b.

Dyer 43. p. 21.

Moyle vers.

Ewre.

Hill. II. Jac. B.

R.

Rolls 655. k. 1.

Co. 10. 88. b.

21 H. 6. 30. a.

day, and to whom of Common right they belong, I shall proceed to shew to whom they are due in some particular Cases.

If a Parson Lease his Glebe-Lands, and do not also grant the Tithes thereof, the Tenant shall pay the Parson Tithes: nay though the Parson Lease his Lands *cum omnibus proficuis & commoditatibus eidem spectantibus*, rendering Rent, *pro omnibus exactionibus & mandis quibuscunque*. Yet notwithstanding the Tenant shall pay the Parson the Tithes arising upon these Lands.

The like Law it is, if an Improptor, Vicar, &c. make such Lease, &c.

And as the Parson shall have Tithes of his own Tenant, so he shall have of his Feoffee. And if a Parson have Lands in the same Parish whereof he is Parson, and demises his Tithes, he shall pay Tithes to his Farmer.

If a Parson sow his ground, and then sell the emblements (I mean the Corn growing upon the ground) the buyer of the Corn shall pay the Tithe of it to the Parson that sowed and sold the Corn.

So if a Parson sow his Glebe-Land, and then Lease the Land, the Tenant shall pay his Parson Landlord Tithes of this Corn.

There has been some opinions, that if the Parishoner sow his Lands, and be

fore

fore severance the Parson die, that in this Case the Parsons Executors, and not his Successor, should have the Tithes.

Uphaven vers.
Humfries 40.
El. per Poph.
& Gaudy vers.
Fenner.

And there has been some Opinions, that if the Parson sow his Glebe, and die before severance, that this Executors should not pay Tithes of this Corn.

But both these Cases, if they had been Law, are put out of doubt by the Statute of 28 H. 8. which hath given all the Tithes and other profits belonging to the Rectory to the Successor from the death of the last Incumbent, which hath taken away all pretence the Executors could have in such Cases. But notwithstanding this Statute, I take the Law to be clear, that the Executor of the Parson shall have the Corn sown by his Testator in his life time, as the Executors of other Tenants for life have by the Law.

*To whom the
Tithes in the
Vacation be-
long.*
Stat. 28 H. 8.
c. 11.

Rolls 655.k. 3

And so it is settled by the Statute of 28 H. 8. before mentioned; But if the Parson, Vicar &c. sow the Land and be deprived, resign or accept another Living, the Successor shall have the Tithes.

Cap. Nullus
Rector verb.
decesserint.
*Whether the Vi-
car, and Par-
son shall pay to
each other.*
Cromptons
Case P. 7. Car.
1. B. R.
Cro. El. 578.

It hath been held, that the Vicar upon a general indowment shall not pay Tithes of his Glebe to the Parson, or the fruits that arise from the same, *Quia decimas Ecclesia Ecclesie reddere non debet*, without special words.

So

*Tithes may be-
long to a Chap-
el.*

More 457:

910.

Hetley 133.

Winch. 701

13 Aff. p. 2.

Dier 87.

Raft. Enr.

Tresp. in dis-

mes 4. & Præ-

muntre in

Rome 4.

*Decret. Greg.

de decimis.

Cum sunt.

Gloss. verbo

diversa.

So if a Vicar be indowed of all the small Tithes arising within the Parish yet he shall not have the small Tithes arising upon the Glebe-Lands of the Parson.

Tithes by prescription may be appendant to an ancient Chappel.

* And note, that by the Canon Law personal Tithes are to be paid, where the party communicates, but predial to the Parson, within whose Parish the Land lies.

CHAP. III.

The third Chapter shews of what things Tithes are due, and in what manner the Tithes of Hay and Corn are to be paid.

*Of what things
Tithes are to be
paid.*

Co. 11. 160.

F.N. B. 53 E.

Lindwood c.
Quoniam
propter verb.
non deductis
expensis.

Tithes regularly are to be paid of all things annually arising from the ground, either of themselves, or by the Culture and Industry of the Parishioners, without any deduction of charge in their proper kinds, as soon as the same may be separated and divided from the nine parts in Sheaves, Garbs or Heaps. But the manner and form of the payment of Tithes is for the most part governed by the Custom of the place: and therefore

By Custom the tenth part of Corn or Hay hath been measured forth growing upon the Lands, as 'tis in some parts of Lincolnshire, this manner of Tithing is to be observed, for in what manner soever the Tithe hath been paid time out of mind, in such manner it still ought to be paid; and therefore where Tithe Corn hath used to be paid time out of mind in Sheaves or Garbs bound up, it is no good payment to leave it in bonds unbound, as I have known some contentious Parishioners do.

How Tithes of Corn are to be paid.

Stat. 27 H. 8.
cap. 20.
32 H. 8. ca. 7.
Litch 125.

And where the Custom was that the Parson should have the tenth Land from the hedge, and the Parishioner neglects to sow the tenth Land, the Parson shall not have his Tithe in kind, but a special Action on his case for not sowing it.

More 913.

So for the Tithe of Hay, if the Parishioner have used to make it into Hay-cocks before they have set forth their Tithes, they must do so still; but where there is no such Custom, they may set it forth in Grass-cocks.

How the Tithe of Hay is to be paid.

Hob. 250.
Rolls 1. 644.
y. 1, 2, 3, 6.

The same order ought to be observed in all other things arising from the Ground as Rape, Saffron, &c. and other fruit.

But no Tithes are to be paid for the Rakings of Corn, unless the Parishioner fraudulently scatter his Corn to couzen the Parson of his Tithes.

Rakings.
2 Inst. 652.
Cro. El. 660.
More 278.
Cro. Jac. 42.

Neither

Yelverton 86.

Hetley 113.

Rolls I. 645.

Z 11, 12, & 13.

Aftermaths.

Rolls I. 647.

Z. 11, 12.

*Green Pease.**Headlands.*

Rolls I. 646.

Z. 19.

2 Inst. 652.

Orchards.

More 683.

Cro. Jac. 47.

Fodder.

Neither are Tithes to be paid of the aftermaths of Meadows, nor of balle in Corn Fields, or of the stubble of Corn. But if the Meadows be so rich, that there is two Crops of Hay got in one year, or two Crops of Woad, &c. then the Parson shall have Tithe as well of the latter as of the former Crop.

If a man gather green Pease to spend in his House, and there spend them in his Family, no Tithes shall be paid for the same; but if he gather them to sell or to feed Hogs, there Tithes shall be paid for them.

Neither shall Tithe Hay be paid for the Grass growing upon head-Lands, which are only large enough for the turning the Plow.

But Tithe shall be paid of the Hay and Corn growing in Orchards, though the Tithe of the fruit growing in them were paid the same year, be it Apples, Pears, Cherries, &c.

There hath been some question about fodder gotten in the Fenn Lands in Cambridgeshire and elsewhere, and spent upon beasts of the Plow and Pail, whether it should pay Tithes or no; but it hath been resolved, that Tithes shall as well be paid of this Fodder, as of other Hay spent upon the Beasts of the Plow and Pail.

But

But it has been resolved, that for *Grass cut in Meadows for Beasts of the Plow.* Tithes should not be paid thereof.

It hath been resolved, that *Tares, Vetches, &c.* cut green for the feeding of the Plow, by Custom may be freed from the payment of Tithes, but *without Custom.*

Wells versus Crawly. T. 1. Car. 1. B. B. Tares, Vetches cut green. Cro. Car. 393. Jones 375. 2 Leonard 27.

CHAP. IV.

The Fourth Chapter sets forth where, and in what Cases, and in what manner, the Tithes of Wood are to be paid.

IN the time of Stratford Archbishop of Canterbury, in or about the 17th year of the Reign of E. 3. 1343. there was a Provincial Canon or Declaration made to this effect.

Declaramus provisione concilii sylvam caduam illam fore que cujuscunq; existens generis arborum in hoc habetur ut cadatur, & que etiam succisa rursus ex stirpibus aut radicibus renascatur, ac ex ea decimam utpote realem & predialem parochialibus seu matricibus Ecclesiis persolvendam, nec non Sylvarum possessores hujusmodi ad prestationem decimarum lignorum ipsorum

Excisorum

Canon. Lindwood c. Quamquam ex solventibus, &c.

*Excisorum in eis sicut fani et bladorum
omni censura Ecclesiastica fore Canonice
compellandos.*

Exact abridge.

But in or about the same year there
ment p. 40. nu. was a Petition in Parliament, that no man
31. & ibid. 80. should be impleaded in a Court Chri-
num. 37. stian for the Tithes of Woods or under
Woods, but in places accustomed, which
was answered; as heretofore, the same
shall be.

The like Petition was in the 25th year
of E. 3. and other Parliaments, till at
the length in the 45th year of the same
King an Act of Parliament was made to
this effect, reciting,

Ed. 3.

St. 45 E. 3. c. 3.
Tithes not to be
paid of great
Wood.

*That whereas they sell their great Wood
of the age of twenty years or of greater age
to Merchants to their own profits, and in
aid of the King in his Wars, Parsons and
Vicars of Holy Church do implead and
draw the said Merchants in Suit in the
Spiritual Court for the Tithes of the said
Wood by the name of Sylva credua, where-
by they cannot sell their Woods to the very
value, to the great damage of them and the
Realm, It is therefore by that Law or-
dained and established, that a Prohibition
in this case shall be granted, and upon the
same an Attachment, as hath been used be-
fore this time.*

By which it appeareth, that this Act
of Parliament was but a Declaration of
the Common Law, Prohibitions and
Attachment

Attachments thereupon in such case having been formerly used, and so was *Paton's Opinion*, 9 H. 6.

This Act of Parliament was after questioned by the Clergy pretending it did not pass as an Act of Parliament, but only as an Ordinance and so not binding. And thereupon the Commons in the next Parliament petitioned, that it might be enacted, that for Wood above twenty years growth no Tithes should be due, and that in all such cases a Prohibition might be granted. To which was answered, that such Prohibition should be granted as then before had been used.

But Sir *Edward Coke* in his Commentary upon *Magna Charta* does sufficiently prove it was an Act of Parliament.

1. Because it is entred upon the Parliament Roll amongst other Acts of Parliament. 2. It is under the Title in that

Roll of Statutes of E. 3. *Anno Regni sui*

45. 3. It was proclaimed with the rest of the Acts of that Parliament. 4. It is penned in the form of an Act of Parliament, viz. (it is ordained and established.)

5. It hath the Consent of the Lords and Commons. 6. There have been infinite Prohibitions upon it. To which let me

add, that in the Parliament of 8 R. 2. It was owned for an Act of Parliament, in which Parliament 'tis like many of the persons were present that were at the making of the said Act.

And

9 H. 6. 56. a.

T. 27 E. 1. 10.

28. a.

Prohibition in Point.

50 E. 3. 10. a.

Exact Abridg.

118. an. 21.

2 Inst. 643.

644.

8 R. 2.

Exact Abridg-

ment of Records

nn. 21.

9 H. 6. 56. a.

And in 9 H. 6. Exception was taken to the Prohibition, because it was grounded upon this Statute.

And in the 11 H. 4. it was affirmed by *Thirning* to be an Act of Parliament and in force.

Seldens Hist.
decim. 236.

2 Inst. 643.
644.

Rolls 1. 637.
638, 639.

But whosoever desires more satisfaction in this point, I refer them to Mr. *Selden's History of Tithes*, and the other places mentioned in the margin.

Notwithstanding this Act, many questions were started what was *Sylva cedua* and many Petitions in Parliament to have it declared, to which I find no positive answers, but sometimes referred to us, and sometimes the King took time to advise.

Sylva cedua
quid.

50 E. 3. 10. b.

But *Belknap* a learned Judge, 50 E. 3. declares, that *Sylva cedua* is to be intended every manner of Wood that may be cut and will grow again: which all manner of Wood will do, as he there says, if it be preserved from Cattel; and therefore the Defendant in the Prohibition in that case was put to traverse, that he found not in the Spiritual Court for the Tithes of gross Woods.

So that the question at this day chiefly is, what shall be said gross Woods? To which question

2 Inst. 643.
what shall be
said great
wood.

The Judges of the Common Law have resolved, that all sort of Wood that is usually imployed for the Building

of Houses, Mills, &c. are groſs Woods, and within this Statute: of which ſort are Oak, Aſh, Elm, Beech, Horſe-beech and Horn-bean againſt the opinion in *Melyn's* caſe: Aſp is likewiſe eſteemed a groſs wood, being ſometimes uſed for Timber; but for Willows, Haſels, Hollies, Maples, Birch, Alders, Thorns, &c. of what age or bigneſs ſoever they be, they are regularly to pay Tithes.

Contra Rolls
1. 640. q. 5.
Flo. 470. a. b.
Contra Rolls
1. 640. q. 7.
Hob. 288.
Rolls 1. 640. q.
6, 7, 8.
Hob. 219.
Noy. 30.
Cro. Jac. 199.
More 907.
*that Birch is
in ſome places
taken for great wood and not tythable.*

taken for great wood and not tythable.

But if they be cut for fencing of grounds, or for ſewel to be ſpent in the Houſes of the owner within the ſame Pariſh, no Tithes ſhall be paid of them.

Cro. El. 499.
609.
Rolls 2. 298.
o. 1.
2 Inſt. 652.

But if by Cuſtom Tithes have been paid of ſuch Wood, the Cuſtom is to be obſerved.

Cro. Car. 113.
More 683.
Rolls 1. 644.
2. 1, 2, 3.

So If a man cut Wood for the burning of Bricks, which are employed for the repair of houſes and buildings of the owner within the ſame Pariſh, no Tithes ſhall be paid for it; but if he make bricks to ſell, or for making of Houſes of pleaſure, or other than for neceſſary Habitation, he ſhall pay Tithe for the Wood ſpent there, if Tythable.

Hetley 80. 110
*Of what Wood
Tithe ſhall not
be paid.*
Rolls 1. 645.
2. 8, 9.
Burning Bricks.
Rolls 1. 645.
2. 10.

If a man convert his Land into a Nurſery for fruit-trees or other trees, and ſell them for profit to ſuch as tranſplant them into other Pariſhes, he ſhall pay Tithes of them.

Nurseries.
Rolls 1. 637.
c. 6.
Cro. Car. 326.
Jones 416.

Grubbed Wood.
Rolls 1. 637.
c. 7.

If a Man cut his Copice Wood, and pay Tithe of them, and soon after grub up the roots to cleanse the ground, he shall not pay Tithes of them.

Upon the whole matter it is left a little uncertain, which shall be accounted gross Wood; because in some Countries almost the meanest sort of Wood is used for building, and the Judgment in our books vary, some allowing one thing for Timber, which another contradicts; but the proper and undeniable Wood for Timber are Elm, Ash, and Oak, which are used for Timber in all Countries and Places: It rests now to shew in what Cases such Woods as are accounted gross Wood shall pay Tithes

If Oak, Ash, Elm, &c. which are esteemed Timber in the Countries where they grow, be cut under one and twenty years growth, they are accounted *Sylvæ caduæ* and ought to pay Tithe.

Loppings of
Trees.

2 Inst. 643.
Cro. Jac. 100.
More 762. 901.
Plow. 470. b.
Rolls 1. 640.
q. 1, 3, 4.
Co. 11. 48. b.

But the Loppings of great Oaks, Ashes, &c. though the Lops be under twenty years growth, shall not pay Tithes; for they are privileged by the bodies, neither shall Tithes be paid of the shoots and under-wood, which grows from the roots and stocks of such Timber-trees, and trees above the growth of twenty years, which have been felled.

Nor shall Tithes be paid of the Bark ^{Bark.}
of such Trees as are Timber-trees and ^{2 Inst. 643.}
priviledged from the payment of Tithes. ^{Co. II. 49. a.}

But Tithes shall be paid of the mast,
scrons, &c. of Timber-trees; because the
same is of annual increase.

Neither shall Tithes be paid of Tim- ^{2 Inst. 643.}
ber-trees, which become dotard; and ^{Dotards.}
or become arida, sicca, & non por- ^{2 Inst. 643.}
tus folia in estate nec existens habere- ^{Cro El. 477.}
mum. ^{Rolls I. 640.}

If one lop Oaks, Ashes, &c. under ^{q. 2.}
twenty years of age, and after let them ^{More 908.}
grow above twenty years of age, no ^{Co. II. 49. a.}
Tithes shall be paid of them or their ^{Rolls I. 640.}
Lops. ^{q. 1.}

It hath been held, that if a Wood- ^{wood mixt}
ground be mixt with Woods Tithable, ^{with great and}
and Woods not Tithable, and the grea- ^{underwoods.}
ter part be such as are not Tithable, it ^{Parsons Law.}
shall priviledge the rest and pay no ^{99. T. 19 Jac.}
Tithe; but if the greater part be Tithe- ^{B. R.}
able it shall pay the Tithe of such part as ^{Buckhurst ver-}
is Tithable; for where the greater part ^{sus Newman}
is great Wood, the whole shall be called ^{Parson of}
grand Wood a majore. ^{Staplehurst.}
^{T. 36 El. B R.}
^{per Henden.}

It hath been a question amongst the ^{who shall pay}
Canonists, who shall pay the Tithes of ^{the Tithe of}
Wood Tithable, the buyer or the seller; ^{wood.}
Mr. Lindwood in his Gloss upon the Ca- ^{Lindwood c.}
Quamquam ex-
solventibus &
verb. Sylvarum pos. & cap. Quia quidam maledictionis verb. asper-

non before recited, seems to be of opinion, that the buyer shall pay the Tithes, *Quia verum enim est quod decima sequitur fructus, & cum onere decime transferuntur fructus in alterum*, and this opinion of his seems reasonable, where the Owner of the wood sells the whole wood together, or parcels it out, and the buyer cut it; but if the Owner of the Wood cut it himself, and then sells it by parcels, there it seems reasonable, that the Owner of the Wood should pay the Tithes, but by the Common Law the Parson may sue the one or the other at his Election.

Rolls 1. 636.
l. 1.

Rolls 1. 637. f.

*Prescription of
not Tithing of
Wood.*

Rolls 1. 637. f.

And it is to be observed, that a whole Province, County or Hundred may prescribe in *non decimando* of Woods, as in the Wilds of *Kent* and *Suffex* and other places, and therefore the Commons in the 17th E. 3, upon the making of the aforesaid Canon moved in Parliament, that no man should be drawn in Plea in the Court Christian for the Tithes of wood or under-wood, except in such places where such Tithes have been used to be paid; for by the strict Letter of this Canon, Tithes were to have been paid of all manner of Wood great and small in all places; to which the answer is recorded, *Let it be done in this also as hath been done before time.*

The manner of the payment of Tithe wood must either be by the measure of the ground by Poles, Perches, &c. as 'tis in some parts of *Lincolnshire*, or every tenth Faggot, Biller, &c. as 'tis paid of Corn and other things, but in this, as in all other Cases, the Custome of the place is to be observed.

The manner of paying Tithe wood.

But no Tithe shall be paid of Wood out for Hop-Poles to be used in the same Parish, where the Parson hath the Tithe of the Hops.

White versus Aarch. M. 15. Jac. C. B.

CHAP. V.

The Fifth Chapter shews where, and in what Cases, Tithe is due for the Herbage or Agistment and Pasturage of Cattel, and who is to pay the same.

I Am now come to speak of the Tithe of herbage, agistment or depasturing of Cattle, for which I find no Canon, save a Clause of a Provincial Canon of *Robert Winchelsey*, dated 1305. in these words.

In what Cases Tithe Herbage is due.

De pasturis autem & pascuis tam non communibus quam communibus statuimus, quod decime fideliter persolvantur, & hoc

The Canon.

per numerum animalium & dierum, ut expedit Ecclesia.

The Tithe of the Herbage or Agistment of Cattle is due, where the Owner or Farmer of any Lands depastures the same with barren Cattel that yield no profit at all to the Parson; which is a Tenth Part of the yearly value of the ground so eaten, but commonly a twentieth part is accepted; but in this, as in all other Tithes the Custom and Usage of the place is to be observed.

Cro. Car. 237. If the Owner of the Land agist it with Forreigners Cattel, then the Owner of the Land shall pay the Herbage Tithe; but if he let the ground to a Tenant, then the Tenant is to pay it.

559.
Jones 254.
who shall pay it.
Cro. El. 365.
2 Inst. 651.
Cro Car. 237.
559.
Herley 93.
Rolls 1. 647.
a. 9, 10.
Rolls 1. 643.
r. 4.
Bulst. 1. 171.
Poph. 126. 142.
Wild. versus Lampton.
T. 15. Jac. B. R.
per 3 Inst. vers.
Houghton.
Sadle Horses.
Rolls 1. 646.
a. 4, 5.
Beasts bred for the Plow and Pail.

But no Herbage Tithe shall be paid for the Agistment of Beasts bred for the Plow and Pail, and so employed in the same Parish; nor for Beasts fed and spent in the Owners house in the same Parish.

So if a man eat a ground with his own Saddle Horses, he shall pay no Tithes for the same; but if an Inn-keeper eat up a ground with Guest horses, he shall pay Tithes for the herbage of them.

If a Forreigner that lives in ant her Parish depastures a ground with Cattel bred for the Plow and Pail, to be employed in a Forreign Parish, he shall pay Tithe for the agistment of such Cattel.

And

And there is no difference between the Case of a Parishioner and a Forreigner, where the ground is eaten with unprofitable Cattel, and not bred for the Plow and Pail, Saddle horses and fatting Cattle, as aforesaid, to be spent in the Parishioners house; but that the Parishioner, as well as the stranger, shall pay Tithe; but for the breeding of Cattle for the Plow and Pail, &c. conduces to the profit of the Parson in his other Tithes, and therefore no herbage ought to be paid for the agistment of them.

No Tithe is due to the Parson for the herbage of Beasts *feræ naturæ*, as Deer, Conies, &c. without a special Custom. <sup>2 Inst. 651.
Herbage of
Beasts feræ
naturæ.
F.N.B. 53.8.</sup>

Fitzherbert in his *Natura brevium*, seems to be of opinion, that there is no Tithe due for the herbage or agistment of Cattel, and adds this reason, because they pay Tithe of the Cattel there depastured, which proves his meaning to be, that there is no Tithe herbage due, where the ground is depastured with profitable Cattel.

If a ground be eaten with profitable Cattel, as Milch Cows, Ewes, Lambs and Cattel bred for plow and pail, &c. and also with barren and unprofitable Cattel, and the profitable Cattel exceed in number, it should seem the greater part being profitable should free the rest, *tamen inde quere.* <sup>Pasture eaten
with mixt
Cattel.
Rolls 1. 641.
q. 20.
Quere.</sup>

R 4

No

Rolls 1. 646.

a. 6, 7.

*Beasts of the
Plow.**Ground eaten
with mixt
Cattel.*

No Tithe Herbage is to be paid of the Agistment of Oxen, Horses or Beasts of the Plow imployed and used in the same Parish, for they are profitable Cattel to the Parson. If a ground be eaten with barren and unprofitable Cattel, and profitable Cattel together, and the profitable Cattel are the less in number; I conceive there's no doubt but the Landholder must pay Tithe in kind for the profitable Cattel, and Tithe of the herbage for the rest, and not herbage for the whole.

*Tares and Vetches eaten
green.*

Colls 1. 646.

a. 6, 7.

If there be a Custom in a Country to sow Tares, Vetches, &c. and to eat them green upon the ground before they are ripe with Horses and Beasts of the Plow, no Tithes shall be paid for the same.

Rolls 1. 647.

a. 8. and 16.

*Of what Cattel
herbage is due.*

If a Stranger or a Parishioner buy barren Cattel, and depasture and feed them for sale, he shall pay Tithe for the herbage of them.

Rolls 1. 647.

a. 13.

If a man buy Oxen, Steers or Horses, and depastures, and after sells them, and doth not without fraud imploy them in the Plow, he shall pay Tithes for their agistment: and if he work them fraudulently to defeate the Parson of his Tithes it will not serve his turn.

Rolls 1. 647.

a. 15.

So if a man buys or rears young Cattel, and depastures them in a Parish, and does not imploy them there for Plow,

or Pail without fraud, as hath been said, he shall pay Tithe for the herbage of them.

But for the Grass of Fallows no Her-
bage shall be paid, because it is for the
bettering of the Parson's Tithes in the
year following; nor for the gross of Stu-
bles.

CHAP. VI.

*The Sixth Chapter shews where,
and in what manner, the Tithes
of Calves, Milk, Cheese, Wooll,
Lambs, Piggs, &c. are payable.*

IN the payment of these sort of Tithes
I do not observe that the Common
Law crosses the Canon in any thing ma-
terial, and therefore I shall recite you the
Provincial Canon made by Robert Win-
chelsey, and his Clergy Anno Dom. 1305.
which is to this effect,

De nutrimentis autem animalium, sci-
liet de agnis statuimus, quod pro sex ag-
nis & infra sex oboli dentur pro decima;
si septem sint agni in numero, septimum
Agnus detur pro decima Rectori: ita ta-
men quod Rector Ecclesie qui septimum
Agnum recipit, tres obolos in recompensa-
tionem

*How the Tithes
of Calves,
Milk, Wool,
Lambs, &c.
are to be paid.*

*The Canon.
Lindwood c.
Quoniam prop-*

tionem solvat parochiano a quo decimam recipit: Qui octavum recipit, det denarium: Qui vero nonum, det obulum parochiano, vel expectet Rector usque ad annum, donec plenarie decimam agnum possit recipere si maluerit; & qui ita expectat semper exigat secundum Agnum meliorem vel tertium ad minus de agnis faciendi Anni, Et hoc pro expectatione primi anni. Et ita intelligendum est de decima lane: Sed si oves alibi in Hyeme & alibi in Aestate nutriantur, dividenda est decima; similiter si quis medio tempore emerit vel vendiderit oves, & certum sit qua parochia ille oves venerint, earundem dividenda est decima, sicut de re que sequitur duo domicilia: si autem incertum fuerit, habeat illa Ecclesia totam decimam, infra cujus limites tempore tonsionis inveniuntur: De lacte vero volumus quod decima solvatur dum durat, videlicet de caseo tempore suo, & de lacte autumnali & Hyeme, nisi parochiani velint pro talibus facere competentem redemptionem, & hoc ad valorem decime & commodum Ecclesie.

How woll and
Lamb is to be
paid.

By this Canon the payment of the Tithes of Wooll and Lambs is settled in this manner, that if the Parishioner have under seven Lambs or Fleeces he shall pay a half peny for every Lamb and Fleece; and if there be seven Lambs or Fleeces, and under ten, then the Parson

or

or &c. is to allow a half penny for every one that is wanting; but where this Canon gives the Rector election to take his Tithe in this manner, or let them run on till a Lamb or Fleece be due in the ensuing year, that is not allowed by our Law; for Tithes must be paid annually; where Sheep are kept in one Parish in Summer, and another in Winter, the Tithes are to be divided: So if one buy in Sheep out of another Parish, the Tithe is to be divided, that is, to each Rector, or his proportion for the time they were respectively kept in the respective Parishes; but if it be not known from whence Sheep so bought in came, then the whole Tithe is to be paid, where the Lambs fall, and the Sheep are shorn.

By the Canon the Tithe of Milk is to be paid in Cheese whilst the Parishioner makes Cheese; but in Autum and Winter, it is to be paid in kind: but this part of the Canon is generally over-ruled by the Custom of the place; for in many places they pay the Milk in kind all the year, in some places they pay only Cheese, and in some neither Cheese nor Milk, but some small rate for it: and in some Countries they prescribe to pay no Tithe of their Milk at all; and the Custom of the place in this, as in all other Tithing, is to be observed notwithstanding the Canon: but for the better explanation

Latch. 254.

P. 14. El. Har-

purs Rep.

Rolls 2. 308.

v. 21.

planation of the meaning of this Canon there was a second Canon made, but the date thereof I cannot attain to, the tenor whereof follows,

Lindwood c.
Quoniam audi-
vimus.
Canon where
Sheep, &c.
shift their pa-
sture from one
Parish to ano-
ther.

Quoniam, ut audivimus, super decimis
& nutrimentis animalium inter Ecclesia-
rum Rectores propter amotiones pecorum ad
diversarum parochiarum pasturas diversis
anni temporibus contentiones multimode
oriuntur: Nos viam pacis preparare vo-
lentes statuendo definimus & definiendo
statuimus, quod ad Ecclesias in quarum pa-
rochiis oves a tempore tonsionis usq; ad
festum sancti Martini in hyeme continue
pascuntur & cubant, Decima lana lactis
& casei ejusdem temporis, licet postea amo-
te fuerint ab illa parochia & alibi ton-
deantur, integre persolvatur; & ne frau-
s fiat in casu predicto, precipimus, quod an-
tequam oves amoveantur a pasturis vel eti-
am distrabantur, Ecclesiarum Rectoribus
sufficienter de solvenda decima caveatur.
Quod si infra predictum tempus ad diver-
sarum parochiarum pasturam transferan-
tur, qualibet Ecclesia pro rata temporis
portione decimam precipiet eorundem mi-
nori triginta dierum spatio in rata tempo-
ris minime computando. Si vero per totum
tempus predictum cubant in una parochia
& pascantur continue in alia, inter ipsas
Ecclesias decima dividatur. Quod si post
festum sancti Martini ducantur ad pascua
aliena, & usq; ad tempus tonsionis in una
vel

vel diversis parochiis sive in propriis pastu-
 riis dominorum suorum sive alterius cujus-
 canque pascantur, habita ratione ad nume-
 rum ovium pascua aestimentur & secundum
 aestimationem pascuorum ab eorum dominis
 exigantur decimæ: Decima vero lactis &
 casei de vaccis & capris proveniens ubi
 cubant & pascuntur, ibi solvatur. Alia
 quin si cubant in una parochia & pascun-
 tur in alia parochia, decima inter Recto-
 res dividatur omnino. Agni vero, vituli
 pulli Equini & alii fetus decimales ha-
 bita ratione ad loca diversa ubi gignuntur,
 oriuntur & nutriuntur, & ad moram quam
 tulerint in eisdem, particulariter deci-
 mentur. Quid vero pro decima debeatur,
 ubi lac propter paucitatem vaccarum vel ^{Milk and}
 ovium ad caseum faciendum non sufficit; ^{Cheese.}
 Et quid pro agnis, vitulis, pullis equinis,
 velleribus, aucis, aut aliis hujusmodi, de
 quibus propter eorum modicitatem decima
 certa dari non potest, consuetudini locorum
 duximus relinquendum. Item precipimus
 quod si quis post festum sancti Martini oves
 occiderit, vel si oves quovis casu fortuito
 moriantur; Decimam legitimam parochi-
 ali Ecclesie solvere non postponat. Et si
 oves extraneæ in alicujus parochia tonde-
 antur, Decima ibidem tradetur Rectori
 Ecclesie, nisi sufficienter doceri posset quod
 pro decima alibi satisfactum ut solutio-
 nem ibidem faciendam modo legitimo va-
 leat impedire.

There

Verbo integr.

There may some question be made upon the first Paragraph of this Canon, whether the Rector, where the Sheep are kept from shearing till Martlemas should have the whole Tithe of the Sheep for the whole year: but Mr. *Lindwood* in his Gloss conceives it is intended the whole Tithe that ariseth during that time, which for Sheep will be nothing at all; but certainly it were very unreasonable that the Rector of the Parish where Cattle are kept but for half the year, should have the whole Tithes, and it cannot be intended to be any more than the proportion for the time they are so kept.

But by this Canon, if Sheep be kept less than thirty days in any Parish, no rate is to be allowed the Rector of that Parish where they are kept so small a time.

*Sheep kept less
than thirty
days.*

If Sheep be bought in a little before shea re-day, and it is not known that they answer the Tithes elsewhere, the whole is to be delivered to the Rector of the Parish where they are shorn.

Where the Milk is so little that it will not make Cheese, or the Calves, Lambs, Fleeces, Colts, Geese, &c, are so few in number that there will none fall to the Parson, the Canon gives no rule of Tithing in that case, but refers it to the Custom of the place: but the Canonists generally hold,

hold, that Custom to pay less then a tenth part is not binding; for says Lindwood, *Custom to pay less than the value of the Tithe.* *Quod laici minus solvant quam decimam non potest consuetudine introducti, quia esset contra jus divinum; plus tamen potest deberi ex consuetudine.* And concludes, *Verb. Consuet. loc.* *Quod autem hic loquitur de consuetudine laicorum, intelligas de tali consuetudine que non excludit solutionem decime, sed de tali que limitat ipsius decime solutionem ad commodum Ecclesie, scilicet ad unum valorem vel amplius;* herein I perceive the Canonists and Common Lawyers agree, that a Custom to be free from payment of any Tithe, or a rate for it, is not good, except it extend to a whole Country, County, &c. and that where there is competent livelihood for the Minister beside; but the Common Law allows of Customs and Prescriptions, where money or some other thing is paid in lieu of Tithes, though not to the full value, as shall hereafter be made appear in its proper place.

By this Canon it is provided, that where Cows feed in one Parish, and lodge in another, that the Tithes shall be divided.

For the Tithes of Lambs, Calves, Colts, Poph. 197. &c. the Tithe of them by this Canon is to be apportioned with respect to the places where they were engendred, brought forth and nourished.

If

If a mans Sheep dye or be killed after *Marblemas*, a proportionable Tithe must be paid for them.

The time when Calves, Lambs, Piggs, &c. are to be paid.

The time of the payment of Lambs, Kids, Calves, Piggs, &c. is regularly when they are so old, that they may be weaned and live without the Dam, unless the Custom of the place confine the payment to any certain time or age, and Wool is to be paid at Sheer-day.

Lindwood c. Quoniam propter verb. lana.

If several mens Sheep depasture together in one flock, or under one Shepherd, yet this shall not make them to be tithed together, but every Owner shall pay his Tithe of them by himself, but if the head of a Family have his Flock mixt with his Children's Sheep which are under his tuition, and he takes the profit of them to his own use, in that case they shall be tithed together.

Several mens Sheep depasture together.

Cro. El. 363. T. wool locks. More 911.

It hath been resolved that where Tithe Fleeces of Wool are paid, there shall be no Tithe paid of the locks and belts; but this seemes to be intended of locks casually lost.

Rolls 1. 645. Z. 14, 15, 16. Bulstrode 1. 3. 242. Neckings.

There is a Custom in some Countries to shear their Sheep about the necks at *Michaelmas*, that the Wool may not in Winter be pulled off with Bryers, and for this sort of Wool without fraud, it hath been held that no Tithe shall be paid; and so of the birling of Sheep without fraud, no Tithe is to be paid.

Rolls 1. 646. Z. 17.

If a Man's Sheep dye of the Rot or other disease, or if the owner kill or sell them as hath been said, he must pay Tithe for the Wool ratably.

Rolls 1. 646.
Z. 18.
Sheep dye of the Rot.
Litch 254.

Though the Canon direct one of seven to be paid only for Wool and Lambs, yet in most places the same order by Custom is observed for Calves, Colts, Pigs, Geese, &c. which Custom I presume took its rise and beginning from this Canon.

By the Canon Law where there is no customary manner of Tithing for the Time of Pigs, Geese, Calves, Colts, &c. where they fall short often, the tenth part of the value is to be paid.

Cap. Sancta Ecclesia verb. coram valorem.

And note, that where Tithe Milk is paid in kind, there no Tithe Cheese is due, and so where Tithe Cheese is paid for so long, no Tithe Milk is to be paid.

Lindwood ca. Quoniam propter verbis de casto.

Lastly, note, that where any Person hath Cattle Tithable going in a Ground or Common whereof the Parish is not known, the Tithe is to be paid in the Parish or place where the party lives that owns the Cattel.

Stat. 2 E. 6. c. 13.

C H A P. VII.

The seventh Chapter shews where, and in what manner, the Tithe of Seeds, Fruit, Mast, Bees, &c. is to be paid.

How the Tithe of Seed, Fruit, Mast, Bees, &c. is to be paid.

Tithes are to be paid of the 'fruits arising in Orchards and Gardens in their proper kinds when gathered, unless there be some *modus* or rate Tithe paid in lieu thereof, and so of the Seed of Flax, Hemp, &c. is to be paid when drest up; but this must be understood where the Tithe of the Hemp and Flax is not paid till after the Seed is gathered, for if the Tithe be paid before the Seed threshed, ripld out or gathered, then no Tithe Seed is to be paid of the rest. The Tithe of Crabs, Mast, &c. is likewise to be paid, when the same are gathered, or satisfaction is to be given if eaten with Swine on the ground; and the Tithe of Bees is to be paid by the tenth part of the Honey and Wax: the Canon is that *De Apibus, sicut de omnibus aliis bonis juste acquisitis quæ renovantur per annum. statuiamus, quod decime solvantur & emgantur debito modo.*

Rolls 1. 640:

q. 10.

Co. 11. 49. a.

Cro. Car. 339.

Jones 447.

F. N. B. 51. g.

Rolls 1. 635.

c. 1.

Cap. Quoniam

propter.

CHAP. VIII.

The Eight Chapter shews where, and in what manner, Tithes of Pigeons, Conies, Fish, Deer and other Beasts and Birds feræ naturæ, are Tithable.

BY the Common Laws of England ^{whether Tithe be due of beasts and birds feræ naturæ.} there is no Tithe due for Birds or Beasts that are *feræ naturæ*, and therefore ^{Crö. Car. 264.} it hath been resolved, that no Tithe shall be paid for fish taken out of the Sea or River, unless by Custom as in *Wales*, ^{339.} *Inland*, *Yarmouth*, &c. neither for the ^{March. 87. Hetley 13. Rolls 1. 635.} same reason, is any Tithe due of Deer, ^{c. 4, 6, 7. Noy 108. St. 2 E. 6. c. 13.} Conies, &c. but if due by Custom it must be paid.

And if a man keep Pheasants, or other ^{Rolls 1. 635.} wild Fowl within limits by clypping their ^{c. 3.} wings, yet no Tithes shall be paid of their Eggs or Young not being reclaimed, for as much as if their wings were not cut they would fly away. ^{Roll. 1. 636. c. 5.}

But of young Pigeons in Dovecoats ^{Hetley 147.} or in Pigeon-holes about a mans house ^{Rolls 1. 644. 2. 4, 5, 6.} Tithe shall be paid if they be sold; but if they be spent in the Family, no Tithe shall be paid for them.

The Parsons Counsellor: Part II.

It is said in *Houghton and Princes Case* in *More's Reports*, that no Tithes shall be paid of tame Turkies, Pheasants or Partridges, nor their Eggs, *quia fere nature*, but I believe the Book is misprinted, for after they are reclaimed, they cannot be said to be *fere nature*.

C H A P. IX.

The Ninth Chapter shews, what Tithes are to be paid for Mills, and what kind and nature they be of.

whether Tithes
are to be paid
of Mills, and
how.

THE Canon is *Cap. Quoniam propter De proventibus autem molendinorum volumus quod decime fideliter & integre solvantur.*

And *Articuli cap. 5.* is to this purpose.

Si quis in fundo suo molendinum erexit de novo, & postea a Rectore loci exigatur decima de eodem, exhibetur Regia prohibitio sub hac forma. Quia de tali molendino hactenus non fuerunt solute, prohibemus, &c. Et sententiam excommunicationis, si quam hac occasione promulgaveritis, revocatis omnino Responsio: In tali casu nunquam exivit Regia Prohibitio de Principis voluntate, qui & decernit talem perpetuum non exire.

It is made a question first, whether 2 Inst. 621.
any Tithes are due for Mills or not,
which Sir Edward Coke in his second In-
stitutes says, was never judicially deter-
mined that he knows of: and it was held
in the Case of a Fulling Mill no Tithe
was due; for of profits that come only
by the labour and industry of man no Cro. Car 523.
Tithe is to be paid, and the same reason 524.
holds for Corn-Mills.

The next question is, admitting, that
Tithes are due for Mills, whether the
same be predial or personal.

Sir Edward Coke is of opinion, that in
Case any Tithe be due, it is only a per-
sonal Tithe, being acquired by the la-
bour and industry of the Miller, and takes
no increase from the ground to make it
predial: And the Statute of 2 E. 6. is,
that every person shall justly set forth,
yeild and pay all predial Tithes in their
proper kinds, as they arise and hap-
pen, which cannot be applyed to the
Millers taking of the Toll dish, nor to
Fulling-Mills, Iron-Mills, Paper-Mills,
&c. which are all comprehended under
the word Mill, and no Tithe can be
paid *in specie*, for if the Parson should
have every tenth Toll dish, then it would
often happen, that he should have twice
Tithe of the same Corn, which is against
the Law, and such Tithe as the Tenth

Toll dish has never been paid in any place, that I have known or heard of.

And if it be a personal Tithe, as
Bulst. 3. 212. there is great reason that it can be no
other, then it must be paid with the de-
duction of the expences and charges, and
it is not payable but in such places, where
personal Tithes are payable by Custom:
See more hereof in the twenty second
Chapter.

Cap. Quoniam But the Canonists hold, That the
propter verbo tenth Toll dish shall be paid as a predial
integre. Tithe without deduction of expences,
which doth not agree with the Common
Law, and is therefore not binding,

CHAP. X.

The Tenth Chapter shews, whether Tithes ought to be paid of Hawking, Hunting, Fishing, Fowling, &c.

THESE are all comprehended under the personal Tithes, for that these things being obtained by the labour and industry of the Party, and the things obtained are *feræ naturæ*, and not of own nature Tithable in their proper kind, unless the particular Custom of the place require it, and therefore I shall refer these to the twenty seventh Chapter, where I shall speak of Personal Tithes.

Tithe of Hawking, Hunting, Fishing, Fowling if due.

C H A P. XI.

The Eleventh Chapter is concerning the Tithes of Ducks, Geese, Hens, Swans, and other domestick Fowls and Birds.

Of the Tithes of domestick Birds and Fowl.

THE Tithe of all tame and domestick Fowl is to be paid in their Eggs, or Young in their proper kind, according to the Custom of the place: Geese, Ducks and Swans are usually paid in their kind, but of Hens and Turkeys, commonly in Eggs, but therein the Custom of the place is to be observed; but note, that where they pay Tithe of the Eggs, there is no Tithe of the Young, nor *e converso* Tithe Eggs paid, where they have the Tithe of the Young.

C H A P.

C H A P. XII.

The Twelfth Chapter shews, of what things Tithes shall not be paid.

Tithes regularly are not due of dwelling houses, and yet a *modus* may be due for a house as well as for land; and it shall be intended, that it was a *modus* for the Land before the House was built.

Of what things Tithes shall not be paid.
Co. II. 16. a.
Hob. 11.

No Tithes shall be paid for Hounds, Apes, Popinjays, & *similia*, because they are things only of pleasure.

Things of pleasure.
12 H. 8. 4. b.
2 Inst. 651.

Neither shall any Tithes be paid of those things, which do not increase from year to year; and therefore no

Things that increase not.
Roll. 1. 636.
d. 1.

Tithes shall be paid for Stone got out of Quarries, Pit-coals, Turfs, Slates, Bricks,

Doct. & Stud. 174.
More 908.

Quarrels, Tyles, Earthen Pots, nor of anything made of Earth, nor of Marle

Cro. El. 277.
More 908.

or Lime got for the Improvement of the ground, nor of Tinn, Lead, Cop-

2 Inst. 6. 1.
Rolls 1. 637.

per or other Mettal gotten out of the ground, but by Custome Tithes of such things may be due and payable.

c. 1.
Doct. & Stud. 174.

Servants in Husbandry shall not pay personal Tithes, neither shall any Tithes be paid of marriage goods.

Baxter versus Hope.
H. 8. Jac. C. B.
10. 1. 109.

No

St. 2 E. 6. c. 13. No Tithes shall be paid of aftermaths,
More 910. Stubbles, or Rakings of Corn without
Rolls 1. 640. fraud.

9. 12, 13, 16. No Tithes shall be paid of Birds, or
17. Beasts, that are *feræ nature*, &c.

More 909. Tithes shall not be paid of Broom
or Gorse used for fuel within the Pa-
rish.

CHAP. XIII.

*The Thirteenth Chapter shews, what
force Custom has, as well in the
form and manner, of Tithing, as
in the discharge of the payment
thereof; and wherein Custom and
Prescription differ.*

St. 2 E. 6. c. 13. **B**Y the Statute of 2 E. 6. it is enacted,
what force Cu- that every of the King's Subjects
stom has in the should from thenceforth truly and justly,
manner of Ti- without fraud or guile divide, set out,
thing. yeild and pay all manner of their predial
Tithes in their proper kinds, as they
should arise and happen in such manner
and form as had been of right yielded and
paid within forty Years next before the
making of the said Act, or which of right
or of custom ought to have been paid.

In

In this Act there are three qualifications.

1. It enjoyns the payment of such Tithes, as had for forty Years then past been of right yeilded and paid.

2. Such as of right ought to have been paid.

3. Such as by Custom ought to have been paid.

Tithes due by Custom are of two kinds.

1. Where there is a *modus decimandi*, and by Custom Money or some other thing is paid in lieu of the Tithes.

2. Where Tithe hath by Custome been paid of things not Tithable, as of Lead in *Derbyshire*; Tynn in *Devonshire* and *Cornwal*; fishing in the Sea, as in *South-wales*, where the Custom is, that if the Parishioner of one Parish land his Fish in another, the Tithes are divided between the Parson of the Parish where the Fisher lives, and the other where he landed his Fish; but if the Parishioner land his Fish in the Parish where he himself dwells, then the Rector of that Parish has the whole Tithes.

And this is confirmed by the Statute of 2 E. 6. cap. 13.

And I have heard that in some Counties they pay Tithe Ale, and Tithe of Rolls &c. which in their own natures are not Tithable.

And

And as by Custom things may be made Tithable which in their own natures are not so; or one thing may by Custom be paid in satisfaction or discharge of another: so Custom hath a great influence upon the forme and manner of Tithing, for the direction of the time, place, and order of payment of Tithes.

*Custom of not
Tithing where
good.*

And as Custom may make things Tithable, which of their own nature are not Tithable; so a Custom of a Province, County or Hundred may discharge the payment of Tithe of a thing in its own nature Tithable, so there be a competency for the maintenance of the Ministry beside.

Hob. 256.

Bull. 2. 245.
Doct. & Stud.
cap. ult.

Rolls 1. 642. b.

1. & p. 5, 6, 8.

Co. 11. 16. a.

Custom to pay

Tithes of things

not tithable.

And therefore in the willds of Kent and Sussex they do pretend by Custom to be free from the payment of Tithe Wood, or any thing in lieu of it, and so in several Countreies they pay no Tithes of their Milk, *Dunton ver. Moyle Finch* 36 Eliz.

And as Custom may prevail in not Tithing; so it may, as has been said, make things Tithable which in their own natures are not Tithable, as the Rents of Houses: Pigeons eaten in the House, Wood spent in the House; and by Custom Tithe may be paid of Salt, Brick, Lime, Ale, Chickens and other things not Tithable.

Rolls 1. 642.

6. 7.

Now

Now the difference between a Custom and a prescription is this; every Custom must have dimension and alledged to be within some certain Province, County, City, Hundred, &c. for if it be a general Custom of *England*, it is Common Law, and such Custom must be common to all within such limits; but if it be confined to one certain Person, House, Land, or other thing, there it becomes a Prescription which is a younger daughter to Custom; and therefore when a Man comes to plead a Custom, the manner of pleading is to alledge, that within such a County, Hundred or Town, there is, and from the time whereof the memory of Man is not to the contrary, there hath been such a Custom used and approved in the same, that is to say, that, &c. alledging the Custom as it is.

Difference between Custom and Prescription.

But when you come to plead a Prescription, you only alledge that you, and all those whose Estate you have in such Lands, have time out of mind paid so much annually to the Parson of *D.* in full satisfaction and exoneration of all the Tithes arising upon the said Lands, &c.

How to plead a Prescription.

So that Custom and Prescription differ in these things, that Custom must be limited and confined to some certain place; Prescription is at large; Custom is common to all the Persons and Lands, within

wherein Custom and Prescription differ.

in the limits wherein it is alledged, but Prescription is confined to certain Persons or things: but in this they agree that they must be constant without interruption, and perpetual from the time whereof the memory of Man is not to the contrary; for if there have been frequent interruptions, there can be no Custom or Prescription obtained; but after a Custom or Prescription is once duly obtained, a disturbance for ten or twenty years shall not destroy it; for *Multiplax interruptio non tollit prescriptionem semel obtentam.*

1 Inst. 114. b.

2 Inst. 653.

2 Inst. 654.

How the Ecclesiastical Laws look upon Customs and Prescriptions.

In what they differ from the Common Law in this matter.

But I must here observe to the Reader, that though the Civil and Ecclesiastical Laws do in some Cases take notice of Custom and Prescription; yet in this they differ from the Common Law, that they allow a usage for forty years to be a good proof of a Custom or Prescription, grounding their judgments upon a decretal Epistle of Pope *Alexander* the Third Anno Domini 1180. But this Kingdom never allowed of that Epistle, or yielded any obedience thereunto: so that as well in Spiritual as Temporal Prescriptions and Customs if they come to be tried at Common Law, as all Prescriptions concerning Tithes must be, they must be proved to have been used beyond the memory of any man to the contrary; for if any man living, or any authentick Record,

Record, or other evidence prove it was otherwise at any time since the first year of Richard the first, which was *Anno Domini 1189.* the Custom or Prescription 2 Inst. 653.² fails.

And the Influence Custom and Prescription have in the Manner of Tithing is confirmed by three several Acts of Parliament.

First, by the Statute of 27 H. 8. where-
by it is enacted, that every Subject of England, &c. according to the Ecclesiastical Laws and Ordinances of the Church of England, and after the laudable Usages and Customs of the Parish or other place where he dwelleth, or occupieth, shall yeild and pay his Tithes, Offerings, and other duties of Holy Church, &c.

By this Statute the Ecclesiastical Laws and Canons are affirmed for the payment of Tithes; but in such cases as they are contrary to the Common Law, or Customs of the place, they do not bind.

Next this Act confirms and allows all Usages and Customs of the place where the Tithes arise, which are to be preferred before all Canons and constitutions in manner of Tithing.

The next Statute is that of 32 H. 8. 32 H. 8. c. 7. whereby it is enacted, That every Person, &c. shall fully, truly, and effectually, set out, yeild to pay all and singular Tithes and offerings aforesaid, according to the Law.



*What Influence
Custom and Pre-
scription have
in the manner
of Tithing.*

27 H. 8. c. 201

Lawful Customs and usages of the Parishes and places where such Tithes or duties should grow, arise, come, or be due.

This Acts seems only to extend to customary Tithes, and so doth the Statute 2 E. 6. c. 13. of 2 E. 6. which is,

That every of the Kings Subjects should from thenceforth, truly and justly, without fraud, or guile, divide, set out, yeild and pay all manner of their predial Tithes in their proper kind as they arise and happen, in such manner and form as hath been of right yeilded and paid within forty years next before the making of the said Act, of right or Custom ought to have been paid.

But more of these Statutes in their proper place. I shall now proceed to shew what Liberty and Priviledge the Parson, Vicar, &c. hath in the grounds where the Tithes arise, for the drying, ordering, and carrying away their Tithes.

C H A P. XIV.

The Fourteenth Chapter shews, what Priviledge and Liberty the Parson, Vicar, &c. hath in the ground, where the Tithes arise, for the drying, making, ordering and carrying away the same.

B*T the Statute of 2 E. 6. It is enacted, that at the Tithing time of Predial Tithes, it should be lawful for every parson, &c. hath in the Lands where the Tithes grow, to whom any Tithes ought to be paid, or his Deputy, or Servant, to see the said Tithes to be set forth and severed from the nine parts, and the same quietly to take and carry away.*

This Statute as to the taking and carrying away, seems only declarative of the Common Law: but as to coming upon the Lands to see the Tithes set forth, seems to me to be a new Authority given by this Law, for the owners of the Land are *de jure* bound to set forth their Tithes duly and rightly; and if they fail therein, the Parson, Vicar, &c. have their remedies; and if the Parishioner do justly and truly set forth his Tithes, although the Parson, Vicar, &c. be not present, or had no notice given him to be present, yet this had been a good setting forth

T before

2 E. 6. cap. 13.
what Privi-
ledge the Par-
son, &c. hath
in the Lands
where the Tithes
grow.

Rolls 2. 302.
9. 19.

before this Statute: but it is a fair and just way to do it in the presence of the Parson, Vicar, &c. And note, this Act is warily penned in the singular number, that the party himself, his Agent or Servant may come to see the Tithes set forth, but must not come with a greater number.

And note, that the Parson, Vicar, Incumbent or Farmer cannot come himself and set forth the Tithes without the Licence and consent of the owner of the Corn, Hay, &c. for if the Parson, Vicar, &c. shall of his own head Tithe the Corn, Hay, &c. of any Landholder within his Parish, &c. and carry it away, he is a Trespassor, and an Action will lye against him for it.

Jones 90.

Lindwood c.
Quia quidem
& cap. Erroris
damnabilis.

But a Parson, Vicar, &c. may *de communi jure*, after the Tithes are set forth, come himself, or his Servants, and spread abroad, dry and stack his Corn, Hay, &c. in any convenient place or places upon the ground where the same grew, till the same be sufficiently weathered and fit to be carried into the Barn, &c. But the Parson, Vicar, &c. must not take a longer time for the doing thereof than what is convenient and necessary; and what shall be said a convenient and necessary time, the Law doth not nor can define, for the quantity of Hay, Corn, &c. and the weather in this case is to be considered, and

12 E. 4th 6. 3.
Rolls 1. 643.
X. 2.

and what shall in this, and all other cases of like nature be said, a reasonable and convenient time is to be determined by the Jury, if the point come in issue triable by a Jury; but if it come to be determined upon a demurrer, or other matter of Law, the Judges of the Court where the cause depends are to resolve the same.

And if the Parson, Vicar &c. shall exceed a convenient and necessary time in the drying, ordering, and carrying away their Tithes; and the Parishioner shall receive dammage thereby; an Action of ^{Hughes Rep: 329.} the Case will lye against them for their ^{Styles 342.} negligence in this behalf.

But no Action will lye against the ^{Styles 348.} Parson, Vicar, &c. in such a case, unless ^{Lampen vers. Woodnet P. 1.} the Parishioner have duly set forth his ^{Car. 1. B. R.} Tithe and given notice thereof to the Par- ^{per Latch.} son, Vicar, &c.

And the Parson, Vicar, &c. may carry ^{Halfey vers. Halfey. H. 6.} his Tithes from the ground where they ^{Car. 1. B. R.} grew, either by the Common way, or ^{Rolls 1. 643.} any such way as the owner of the Land ^{x. 3.} useth to carry away his nine parts.

But if the owner of the Soyl, after he has duly set forth his Tithes, will stop up the ways, and not suffer the Parson, Vicar, &c. to carry away his Tithes, or to spread, dry and stack them upon the Land, this is no good setting forth of his Tithes without fraud, within the Statute

Bulst. 1. 108.

of 2 E. 6. but that the Parson, Vicar, &c. or other Owner or Farmer may have an Action upon the said Statute, and may recover the treble value; or may have an Action of the case for such disturbance, as I conceive; or he may, if he will, break open the Gate fence, &c. which hinders him, and carry away his Tithes; but in that he must be cautious that he commit no Riot, nor break any Gate, Rail, Lock, Hedges more than necessarily he must for his passage.

And note, that the Parson, Vicar, &c. when he comes with his Carts, Teams or other Carriages to carry away his Tithes, must not suffer his Horses, Oxen, &c. to eat and depasture the Grass growing in the grounds where the Tithes arise, much less the Corn there growing or cut; but if his Cattle (as cannot be avoided) do in their passage against the Will of the Drivers here and there snatch some of the Grass, &c. this is excusable.

Roll's 2. 284.
f. 21.

And if the Parishioner duly set forth his Tithe of Hay or Corn, and will not permit the Parson, Vicar, &c. to make the Hay, or spread and dry the Corn, as he ought, it amounts to a subtraction of the Tithes, and the Parson may sue for the subtraction of such Tithes in the Spiritual Court, and no Prohibition lies in this Case.

C H A P. X V.

The Fifteenth Chapter shewes, to what Charges the Glebe lands belonging to a Rectory and the Tithes are Subject.

S I R Edward Coke tells us, *Quod nullus pro decimis, quæ sunt spirituales, de aliqua reparatione pontis, seu aliquibus oneribus temporalibus onerari debet.* 2 Inst. 641. *What Charges Tithes and Church-lanis are subject to.*

That Tithes being Spiritual were not subject to Temporal Charges at the Common Law.

And Sir Edward Coke is of Opinion, 2 Inst. 641. that at this day if Tithes be in the hands of temporal Men, they are by reason of them contributory to temporal Charges.

And upon a doubt of Mr. Justice P. 5 Car. 1. Telverton, who was Justice of Assise in the Bishoprick of Durham, as Sir Nicholas Hide, heretofore Chief Justice of the Kings Bench, has reported, it was resolved by all the Judges of England, that Tithes are at this day chargeable with all charges imposed by any Act of Parliament, wherein they are not excepted, as upon the Statute of 43 Eliz. to the poor, and to maimed Souldiers, Kings Bench, Marshalsey, Bridges, &c. But they are not Subject to any Charges

Temporal at, or by, the Common Law.

Web versus
Batchler.
T. 167. B. R.
per Hunt.

And so it was lately held by my Lord Chief Justice *Hales*, and the Court of Kings Bench, for watch and ward and repair of the High-ways; And this Case then vouched by the Chief Justice.

First-fruits.
See more of this
matter and
Tithes 4 Inst.

120, 121.

* *Cowel verbo*
Annates.

How these dif-
fer from the
fruits under

the Law Vide

Tho. Aquinas

20. 2e. 786.

art 4.

Polyd. Virgil.

De Inventione

verum l. 1. c. 2.

p. 498.

But Tithes at this day are subject to pay First-fruits or Annates, in Latine *Primicie*, which are the first years profits of every spiritual Benefice at a new Incumbents Entry into his Living; *they were anciently exacted by the Pope of Rome, when he had small revenues to support the publick charge of his place; And *Polydore Virgil* tells us, *Ceterum nullum inventum majores Romano Pontifici cumulat opes quam annatum quas vocant.*

And *Polydore Virgil* tells us, that Pope *Boniface* the Ninth first introduced them, though others ascribe them to *John* the 22d.

But some are of an Opinion (and not without Reason) that Annates were much ancientser then Pope *Boniface* the Ninth, who entred upon the Papacy in the year 1389. And *John* the 22. not till the year 1410. But it appears by our Parliament Rolls, (which are Infallible Evidence) that this payment had wrought *England* in the 25th year of the Reign of E. 3. which was in the year of our Lord 1351. In which year there was a complaint

complaint, made by the Commons in Parliament that the Pope had reserved to his own Collation, as well the Abbies and Priories, as also all other the great Benefices, whereof any Ecclesiastical or Religious persons had the Patronage; and that he had lately reserved all the Dignities in *England*, and the * Provenders * *Prebends*, I in Cathedral Churches, by which means suppose the Pope had the First-fruits of all the said Benefices. By this complaint it should seem the Pope had yet got in but one Leg; that is, to have the first fruits of those Livings, to which he himself collated: a pretty piece of Symony!

In the 50th year of the same King, the Commons renew their complaint again, and amongst many grievances from the Court of *Rome*, there complain'd of, one is, that the Pope's Collector that year (a thing never before done) had taken the First-fruits of every Benefice whereof he made provision or Collation, whereas he was used to take First-fruits only of Benefices vacant in the Court of *Rome*.

And 9 H. 4. cap. 8. not in the print; there is a Statute expressly against payment of them upon the pain in the Statute of Provisors, which is a *Præmunire*.

And if *Walsingham* say true, *summus* Hist. *Wals.* Pontifex (Anno 1316.) reservavit *Ca-* P. 84, 45.
metre sue, primos fructus beneficiorum om-

Rot. Parl. 8.
Par. 25 E. 3.
n. 13.

Anno 1376.
Rot. Parl.
n. 100.
& 6 H. 4. nu. 21.
6 R. 2. 50.
1 R. 2. nu. 66.
4 R. 2. nu. 44.

nium in Anglia, per triennium vacantium.

So that it is apparent, that in some cases First-fruits were paid long before Boniface the 9th, or John the 22d. but perhaps the Popes before them had not made it an universal payment.

These were often complain'd of, as a great oppression upon the Clergy, as *Henricus Hostiensis*, who lived in the time of Pope of *Alexander* the Fourth, witnesseth; but however upon the abolishing of the Popes Usurpations here in *England*, the poor Clergy were not acquit of this exaction, but the same was by the Statute of 26 H. 8. settled upon the then King and his Successors.

St. 26 H. 8. c. 3.

The First-fruits are not here in *England* rated at the full and utmost value of the Living they are to be paid for, but according to the valuation taken and made in the said 26 year of King H. 8. and now used in the First-fruits Office.

1 Eliz. cap. 4.

And these First-fruits are by a Statute made 1 Eliz. not to be paid all at once; but one quarter of them is to be paid at the end of six months from the time of the Induction, Collation, &c. another fourth Part at the end of twelve months, another fourth part at the end of eighteen months, and the last quarter part thereof at the end of two years.

1 Eliz. cap. 4.

And by a Statute made 1 Eliz. all Vicarages

carages not exceeding ten pounds, and all Parsonages not exceeding ten marks, according to the valuation in the First-fruits Office, are discharged from the payment of First-fruits.

And if an Incumbent die, or be legally removed out of his Living without fraud, then after such death or removal, the remaining half yearly payments of the First-fruits, which were not become due, are discharged by the said Statute of 1 Eliz.

And by that Statute the Dean and Canons of *Windsor* are discharged of the payment of First-fruits.

And by the Statute made in the 26th year of H.8. before mentioned, it is enacted, *That every Archbishop, Bishop, Dean, Prebendary, Archdeacon, Parson, Vicar, &c. before he have any actual or real possession, or meddling with the profits of his Living (this must be between Institution, Collation and Induction) must pay or compound for, and give security for the payment of his First-fruits, in the First-fruits Office. And that an Obligation taken for the same should be of the force of a Statute of the Staple, and that if any such presume to enter into his Living before such payment or security given, or composition made, he is to forfeit double the value.*

St. 26 H.8. c. 3.
when the First-fruits are to be paid.

But his Majesty and his Royal Predecessors have not been severe in this Case
to

to take the penalty, but upon failure thereof the Officers of the Exchequer have sent out Proceſſes to the Sheriff, to put the negligent Parsons, Vicars, &c. in mind of their duty, and upon coming in and paying the charge of the Proceſſes, and paying or giving ſecurity for the Firſt-fruits they are diſcharged.

But the Parsons, Vicars, &c. muſt be careful to pay in their half yearly payments, as the ſame become due, and take up their bonds, or elſe new Proceſſes will iſſue to the increaſe of their charge.

*Why Vicarages
are charged
higher in the
Firſt-fruits Of-
fice than Par-
ſonages.*

Perhaps ſome may be ſo curious that ſhould deſire to know, why Vicarages now exceeding ten pound ſhould be freed of this charge, and Parſonages of ten marks ſhould pay them: now the reaſon of that was, that the Vicarages in time of Popery, and when the Valuation was taken, had a great income by voluntary Offerings, which falling to little or nothing upon the diſſolution of Monaſteries, this favour was afforded them in their Firſt-fruits.

*Tenths.
It ſhould ſeem
theſe were im-
poſed by Boni-
face 8. to main-
tain his wars
in Sicily.
Extravag.com.
li. 3. p. 296.
2 Inſt. 628.*

The next charge Parsons and Vicars are ſubject to, are the Tenths, that is, a tenth part of the yearly value of all their Church Livings; this payment was firſt exacted from the Clergy by the Pope about the twentieth year of E. 1. and a Valuation was then made by his authority of all Church Livings, at which rate the

the Pope was answered his Tenth, but never had any Tenth of such Land as was given to the Church after that time. These payments (as appears by our Histories) the Pope of *Rome* sometimes granted to Kings of *England*, when the Kings pleased them, or rather when they feared their power; but upon the abolishing the Pope's power, which was in the 5th year of *H. 8.* these Tenth were given to the King the year following by the aforesaid Statute of 26 *H. 8.* and to be paid at Christmas yearly, and the Bishop of the Diocese is to collect them, and they are to be paid according to the valuation taken the same year, and now in the First-fruits Office, and are not paid that year the First-fruits are paid, but are allowed out of them, because 'tis intended that the King has the whole years profit.

Stat. 25 *H. 8.*

Stat. 26 *H. 8.*

cap. 3.

But immediately upon the Reformation many Clergy men scrupled, and decayed to pay these Tenth to the King, being a duty properly due to the Pope, and therefore the refusal or neglect to pay them to the King, being certified by the Bishop that had the Collection of them, is made a Cause of Deprivation not only of the Living, for which they refused to pay their Tenth, but also of all their spiritual preferments.

Stat. 26 *H. 8.*

cap. 3.

But by the Stat. of 2 and 3 *E. 6.* that severity was moderated, so that now the refusal

Stat. 2 & 3 *E.*

6. cap. 20.

refusal or neglect to pay them, and so certified by the Bishop, makes only that Living void, for which the Tenths shall be forfeited. But his Majesty and his Royal Predecessors have rarely put the severity of this Law in Execution, but make out Process in the Exchequer to compel the payment: however since the penalty is so great, every Clergy man ought to be very careful to avoid the danger.

More 541.

An Aparitor came to a Parson newly inducted, and told him he must pay his Tenths to such a person, naming him, at such a day and place four miles off; and this was adjudged no good demand to make his Living void, within the Statute, but such demand which shall make a Living void within the Statute, must be positive by one that hath power to demand and receive it.

Stat. 27 H. 8.
cap. 8.

The remedy
where the Successor pays
Tenths due by
his Predecessor.

There is a Provision made by an Act of Parliament in the 27 Year of H. 8. for those Incumbents that shall be forced to pay the Tenths due in the time of their Predecessors, that they may levy the same upon any Goods they can find of their Predecessors upon the Church Living; and if they be not redeemed within twelve days after they shall be distrained, that then the same shall be praised by two or three indifferent Persons to be sworn, and so many of them sold as will satisfy the arrear with cost; and if no such Goods can be found, then the Successor

Successor to take his remedy against his Predecessor, his Executors or Administrators, or others to whom his Goods shall come, by Bill in Chancery, or in Action of Debt at Common Law.

There is another charge, to which the Parsons, Vicars, &c. are subject for their Church Livings, which is called Procurations or Proxies; and these are duties due and payable to the Bishops and Arch-Deacons at the time of their visitations, which are not paid by any certain Rule, but by some antient Taxation; for anciently the Religious Houses and Clergy-Men at their own charge entertained the Bishops and Arch-Deacons in their visitations, but at length their attendants were so many, and their trains so great, that the Clergy and Religious Houses were horribly oppressed with entertaining of them; to avoid which, the Clergy and Religious Houses came to this composition, every one to pay such a proportion to their Visitors to be freed of that great oppression: and therefore the Canonists define them to be, *Exhibitio sumptuum necessariorum facta Prae-latis qui Dioceses peragrande Ecclesias sub-jectas visitant*, and this payment is continued to this day, not only of those Livings which are still enjoyed by the Clergy, but also of the Impropriations being saved by the Statute of 31 H. 8. and confirmed by the Statute of 34 H. 8. and remedy

Procurations.

Sir John Davies Rep. 1, 2, 3.

See more of this matter Lindw. cap. ut singula Ecclesiastica, That by a Canon made by Steph. Langton about 1222. the Arch-Deacons were to bring but seven horses in their trains, and stay but one day and to invite no body.

31 H. 8. c. 13.

medy given for them with Costs, both in the Spiritual Court and at Common Law.

Cap. Quoniam
autem verb.
una tantum.

And note, that if there be a Parsonage and a Vicarage indowed, there is but one of them to pay procurations, but which of them must pay, is to be directed by Custom, or the indowment, if extant.

Note likewise, that Donatives are not to pay procurations, because they are not within the visitation of the Ordinary; and so for free Chappels, for the same reason.

Cap. Quamvis
lex naturæ.

And if there be a Parsonage which has a Chappel depending on it, that is, where both are in the Parsons cure, no procurations are to be paid for the Chappel.

Synodals.

Synodals is another charge upon the Parsons, Vicars, &c. and is likewise paid to the Arch-Deacon, not by any certain rule; but by some ancient Taxation; so that some pay more, and some less.

I must confess I cannot find how this payment first became due, but by the name it should seem to be a contribution to the Arch-Deacon's charge in the Synods, they * being anciently elected by the Deacons themselves as their representative.

* St. Jerome
in his Epistle to
Evagrius says,
Diaconi ele-

gant de se quem industrium noverint, & Archiadiconum vocent.

† But it should seem, that the Arch-Deacons claim these Synodals for their Easter visitation: and the Bishops have † Dugdales
1747. 126. b. v.
had some claim to them, but, as my Author conceives, without any just reason, the Arch-Deacon and his Officers performing the Labour, and undergoing the Charge.

Since my first publishing of this Book, a learned and worthy Divine sent me a Book, written by a learned and ingenious person amongst other things concerning Synodals, whereby he expected I might receive some satisfaction concerning the Original and growth of them; at whose Candle I should thankfully have lighted mine own, if it had given a clear light: But when I came to read the Book, I found the Author indeavoured to prove them one and the same with the Chathedraical Duty, whose reasons to that purpose I can by no means subscribe to.

First, because Mr. Lindwood, a very Cap. Quoni-
learned Civilian and Canonist, reckon- am autem
ing up the *onera Ecclesiastica*, tells verb. onera
us, *Quedam enim sunt que dicuntur E-* Ecclesiastica.
piscopalia, & inter hæc continentur Syn-
odaticum, Cathedraicum, &c. so that
it appears he conceived them two several
and distinct charges.

Secondly,

Causa 10. q. 3.
Quid vero &
placuit ut nul-
lus & Concil.
Braca cap. 2.

Secondly, the *Cathedraicum* is by the Canons restrained not to exceed two shillings, and whereas anciently the Bishops had a third part of the Offerings, and in consideration thereof were to repair the Churches; they had this payment in consideration of the third part of the Offerings, and were acquitted of the repair of the Churches. But I could never learn that the *Cathedraicum* was ever paid in *England*: and the reason may be, because the Churches in *England* have always been repaired by the Parishioners by custom. Now the *Cathedraicum* being limited to two shillings, and finding upon inquiry that the Synodals are not confined to any certain sum, but for the most part more then two shillings: it is very improbable that they are one and the same.

Thirdly, the *Cathedraicum* is annexed to the Bishops Chair, and in recompence of a duty not transferred to any other, but for ought I could ever learn, the Synodals have been always paid to the Arch-Deacons: and therefore for these reasons I take them for several and distinct Duties, as *Linwood* seems to take them.

The same Author gives an account of some difference that has been moved between the Arch-Deacons and the Clergy, whether Procurations are due to the Arch-

Arch-Deacons when the Bishop visits: in which case the same Author has given his Verdict clearly for the Arch-Deacons, and grounded his Opinion upon Reason, Custom and Authority.

First, his chief and only reason is, because the Arch-Deacon pays his Tenth as well for that year the Bishop visits, as for the other two; and therefore he concludes it very reasonable he should have that for which he pays Tenth:

But I conceive there is a great mistake in this Argument, for I am not satisfied the Arch-Deacons pay any Tenth for their Procurations, but for the Corps annex to their Arch-Deaconries and their jurisdiction; for it were against reason to charge them to pay Tenth for that they eat and drink in their Visitations, and the Tenth ought to be of the clear profit; but where the Procurations are paid in money it should seem Tenth are due.

Vide extra.
com. de deci-
mis 256.

But admitting upon the valuation in the 26 H. 8. the procurations were valued (for in that of 20 E. 1. they could not be valued, not being then reduced into Money, nor of long after) then the Argument runs no farther, than that, because the Arch-Deacon pays a tenth part against reason, therefore the Clergy must pay the whole:

¶

But

But the reason against the Arch-Deacons in my judgment is much stronger. I shall not take upon me to examine whether their Jurisdiction be ordinary or delegated; I will admit Custom has made it in some measure ordinary, though much might be said against it, I will let that point pass unquestioned, but from the beginning it was not so. But let that be as it will, it is clear there was no Jurisdiction annexed to Arch-Deaconries originally, the first step was over the Deacons, as shall be shewed hereafter: It is without all doubt, that Originally all Jurisdiction over the Clergy was in the Bishops, and they in their own persons visited the Churches within their Diocesses, for the first 600 Years after Christ.

4 Concil. To-
letan. cap. 35.
2 Concil. Era-
ca cap. 1.

But in the Fourth Council of Toledo, which was held about the 630th year after Christs Birth under *Honorius. 1.* It was decreed, *Episcopum per cunctos Dioceses Parochiasq; suas per singulos annus ire oportet; what to do? not only to eat and drink, but ut exquirat quo unaquęq; basilica in reparatione sui indigeat. But si ipse aut languore aut aliis occupationibus implicatus id explere nequiverit, presbyteros probabiles aut Diaconos mittat, qui & redditus Basilicarum & reparationes & Ministrantium vitam inquirent.*

This

This is the first Commission that I can find for Bishops to make substitutes to inquire, but the Jurisdiction still reserved to the Bishop to admonish, examine and punish; but here is no news of Arch-Deacons as yet in power.

The first news I hear of any thing tending to any Jurisdictionem was over per lects. the Deacons, for Gratian tells us, *Archidiaconus Subdiaconis & Levitis ad quem pertinet Ministeria. Et ad ipsum nuntiat Episcopum excessus Diaconorum*: So that it seems the petit Jurisdiction the Arch-Deacons begun with was to inspect the behaviour of their Brother Deacons, and to give the Bishop an account of their miscarriages in the nature of a Monitor only.

The next news I hear of them is a complaint against them, *Quod in plebibusq; locis ipsi super Presbyteros quandam exerceant dominationem*: but staid not there, but *ab eis censum exigunt*; (which the Bishops could not do) whereupon it is comanded, *quod sint contenti regularibus disciplinis, & teneant propriam mensuram quam ab Episcopis eis injungitur; hanc per perochias suas exercere debeant, nihil per cupiditatem & avaritiam presumentes*. Here it appears they had gained some employmet under the Bishop over some certain Parishes, but with a limited Jurisdiction;

Distinct. 94.
dictum est.

they must keep their measures, must not exceed their bounds.

Hob. 16.

Ergo dicuntur
oculi Episcopi.

By this it appears that the Arch-Deacons are meerly Substitutes to the Bishop, and what authority they have is derived from him, his chief Office being to visit and inquire, & *Episcopo nuntiare*; and therefore the Bishop takes what course he pleases to his own cognizance, and leaves some petit business to the determination of the Arch-Deacon. This being granted, which cannot be justly denied, it is against all the reason in the world, that the Bishop by easing of himself by appointing a deputy Vicar or Vicegerent should double the charge upon his Clergy.

As for the Custom alledged for this duty, before I give an Answer to it, it will be necessary to examine how the Canon Law stands in the point.

Cap. ut singula
Ecclesiastica.

And by our own Provincial Canons I find it is especially provided, that the Arch-Deacons should receive no Procurations, *nisi illo die quo personaliter visitant Ecclesiam procurantem*; and it goes further, *nec redemptionem pro visitatione presumnat*. What can be more clear and what can this redemption mean but Procurations in Money as is now used?

And the Gloss, to make still more clear, tells you, *forſan quia Episcopus eodem Anno viſitavit & ſuſpenderat Jurisdictionem Archidiaconi, & ſic Archidiaconus vult ab eis aliquid loco procurationis exigere quod non licet, ut hic, ubi non viſitavit.*

Verbo viſitatione.

And by another Canon made by John Stratford Archbiſhop of Canterbury and his Clergy, about the year 1345. it is forbidden. *Ne quis procuracionem ratione viſitationis ſolvendam ab aliqua præſumat recipere Eccleſia, niſi viſitationis officium diligenter eidem impenderit, ſcrutatis perſonaliter & inſpectis per ipſum cum effectu quæ fuerint indaganda. Vide 4 Concil. Later. ſub Innocent 3. ca. 33.* to the ſame purpoſe.

Cap. Quamvis
lex naturæ.

By this Canon likewise there is no procurations to be paid without perſonal viſitation, but for the better underſtanding of this Canon I muſt obſerve to the Reader that there is two other ſorts of procurations, the one by Paſt or Covenant, the other by Cuſtom, that are no ways related to viſitations, and therefore the Canon well diſtinguiſhes, *ratione viſitationis.*

Ibidem verb.
ratione viſitationis.

And after that Canon has taken care for moderating the exceſſive charge of the viſitors in their viſitations, it leaves it to the choice of the viſited. *An in præſentia quantitatis ſolitæ, vel in vicinalibus*

bus visitantes eosdem voluerint procurare, optionem reservamus.

Verb. solet
solvi.

And Mr. Lindwood tells us in those days it was a common use in England, that the Arch-Deacon received in Morney, *nomine procurationis* seven shilling and six pence, that is, Eighteen pence for himself and his Horse, and Six shillings for his Six Attendants and their Horses.

There is by the same Canon provision made, that where there is a Church and a Chappel depending of it which is not presentable, but within the charge and cure of the Parson, that in that Case there shall be but one procuration for both, and that he that shall take more, shall *ipso facto* be suspended *ab officio & beneficio*, till he has paid double the sum received to the Cathedral Church of that Diocess.

Lastly, this Canon concludes with the Duty of the Arch-Deacon and other Ordinaries in their visitations, that *in Ecclesiis quam ornamentis eorum, cimetriorum clausuris & mansorum domibus reperientes defectus, iis sub pecuniariis penis precipiunt reparare, &c.*

So it appears by these Canons, that there is no procurations due to the Arch-Deacons, unless they visit *personaliter*; and if it be demanded, why in person? and why *Ecclesiasticum*? the close of this Canon tells you.

Now

Now you shall hear what Othobon, the Popes Legate, in a national Synod held in St. Paul's London in May 1268. says to this matter, *Cum autem* (says he) *ratione visitationis procuratio debeatur, si quid exequatur vel recipiatur hujusmodi ratione cessante, jam male recepti & indebiti nomen subiit. Cum igitur intelleximus quod plerique prelati procuraciones a subditis exigunt, licet visitationis officium non impendant; nos tam Ecclesiarum indempnitati quam* * *prelatorum* * *saluti consultius providentes, districtius inhibemus, ne quis eorum procuracionem, que ratione visitationis debetur, ab Ecclesia quacunque recipiat, nisi cum eidem visitationis officium impendit; qui vero receperit, donec restituerit, ab ingressu Ecclesie sit suspensus.*

See causa 10. q. 1. Relata to the same purpose.

* Nota.

So that it appears by these Canons, the Arch-Deacon, when the Bishop visits, ought not to have procurations, but is expressly forbid to exact them. Now how far a Custom shall prevail against a Canon (I mean such Custom as the Ecclesiastical Courts allow of forty years continuance) belongs to the determination of the Canonists. And the Author tells us, page 25. from them, that that Custom is said to be *rationabilis*, and by consequence *inviolabilis*, that is binding, *Que nec divino juri contradicit nec obviat canonicis institutis.*

Concil. Later. 4. sub Iano-cent 3. Can. 33. accords.

I could say much more to this purpose, but it belongs to the Canonists, to whom I leave it.

But if the Author intend such Customs as is allowable at Common Law, when he says Canons cannot be of such force as to annihilate and overthrow national Laws and Customs, I must grant he is therein very right.

But in this Case there can be no such Custom; for every Custom allowable at the Common Law must have its commencement before the first year of R. 1. which was, *Anno Dom.* 1189. but the Decree of Pope *Benedict XII.* which first gave way to commuting procurations into Money *Volentibus*, was about the year 1337. and Money payments in lieu thereof were not settled here in England of long time after; and therefore they cannot be claimed by any Custom or Prescription at Common Law.

For the Case of *Proxies* in Ireland, which he vouches forth of Sir *John Davies* Irish Reports, I conceive makes nothing at all to this question; for it is not at all moved in that Case, whether there were a double *proxie* due, the one to the Bishop when he visits, and another to the Arch-Deacon that sits still: But I presume the Author makes use of that Case to prove, that procurations may be due *ratione visitationis*, when there is no

visitation;

Vas electionis
Extravagan.
li. 5. de censu-
bus, &c.

visitation; And I will agree they may by Act of Parliament; and in that Case, there is two Acts of Parliament for them.

But Sir *William Capels* Case vouched Co. 4^d in *Lutterels* Case may be conceived to make something to this purpose, where the Case shortly is, that one held his Land *inter alia* by the Rent of Five shillings *pro wardo castri*, and upon avowry for this Rent, the Tenant pleaded that the Castle was down, and therefore no Rent due, and upon demurrer adjudged against the Tenant: and very great reason, for the Rent was reserved in respect of the Land, and not in respect of the Castle, for the reservation of the Rent is *Reddendum inde*, that is, for the Land Five shillings *annuatim pro wardo castri*; and the saying the Castle is down does not answer the *debet*, but if the Land for which the Duty arises be evicted by a more ancient Title, the Rent is gone: so that this Case being rightly understood makes against the Arch-Deacons rather than for them; for in their Case the annual payment is paid for procurations. Procurations are due, *ratione visitationis*; then when the Bishop that has the ancients right to visit inhibits his Deputy, and does the work himself, to whom does the wages belong?

Decret. Greg.
li. 2. cap. 16.
cum ex officio.

And

And note, that by the Canon Law no man may prescribe to be free from procurations *ratione visitationis*.

Here I could willingly end my discourse, for I doubt I have said enough to displease some: but no good Man ought, nor I hope will take any offence at what has been said, or at what I am about to say; and therefore I shall add a word or two concerning the Arch-Decons and their Visitations.

C ncil. Toletan 4. cap. 5.
& Braca ca. 7.

It appears by what has been said, that for the first Six hundred years after Christ, the Bishops in their own persons visited, *cunctas dioceses parochiasq; suas singulos annos*, and they had Seven Deacons in every City, that is, Diocess to assist them. After that they had Authority in case of sickness, or other publick concerns, to delegate Priests or Deacons to assist them: and thereupon, as should seem, they cantonized their great Diocesses into Arch-Deaconries, and gave them Commissions to visit and inquire, and to give them an account of all at the end of their visitations, as is before related; and the Bishops reserved the third year to themselves to visit their Churches, and thereby to inform themselves how the Arch-Deacons, their substitutes, performed their duties, how they domineered over the Clergy, and were reduced to their true measures.

You

Dist. 94.
dictum est.

You have heard after upon complaint of the oppression, they and others used in their visitations by their excessive numbers of Attendants, in one of the Councils of *Lateran* the number of their Attendants were limited, and by Canons of our own several restrictions have been made against the exorbitances of visitors.

By one Canon in the time of Arch-bishop *Langton* they are commanded that in their visitations their Attendants shall not exceed the number limited in the general Council of *Lateran* (whereby an Arch-Bishop in his visitation is allowed Forty or Fifty Men and Horses, a Bishop Twenty or Thirty, Arch-Deacons Five or Seven, an Arch-Priest Two.) And further restrained the visitors, that they should invite no body to their visitation entertainments.

But this did not do the work intended in easing the Clergy; therefore after in the time of *Stratford* Arch-Bishop by the Canon before remembred it is further provided, that if any *plures visitare volunt Ecclesias una die, procuracione unica in victualibus vel pecunia, ad quam omnes & singulas sic die unico visitatas proportionabiliter faciat contribuere, prout tradunt Canones, sit contentus. Et si nocte precedente visitationem in quavis Ecclesia faciendam ad sumptus Rectoris seu vicarii visitandi, seu die visitationis in prandio steterit,*

Cum Aposto-
lus. Sub Alex.
3. 1175. ca. 4.

Ue singula Ec-
clesiastica.

Cap. cum A-
postolus.

Quamvis lex
naturæ.

terit, cum eisdem veram estimationem sumptuum hujusmodi in procuratione, si eam in pecunia visitans licite duxerit exigendam, computare, seu allocare, vel pro ea in toto studeat compensare. Ita quod nec ultra sumptus hujusmodi solidam procurationem in pecunia, nec amplius quam deductis eisdem sumptibus de procuratione in pecunia exsolvenda supererit, presumat recipere vel exigere quovismodo. Si quis autem aliter fecerit, donec indebita recepta restituerit, ab ingressu Ecclesie noverit se suspensum.

Naturalis dispositionis.

And likewise by the before mentioned decree of Othobon it is ordered, that Bishops and other inferior Officers in their visitations, *in superflua comitiva seu evellionum numero, vel alijs in expensis gravare subditos non presumant ultra quantitatem & numerum determinatum in constitutione Innocentii Pape quarti, ne, &c.*

Vas Electionis ubi supra.

But Pope Benedic't the XII. good Man, made an Edict or Constitution decretal, whereby he settled what every Clergy-man, &c. should pay by way of commutation in lieu of their procurations, and this was about the year 1337. But the good Pope left it in the Election of the visited, whether they would pay their procurations in Money or victuals: but it was long after, as should seem, before this Decree was generally received in *England*; (which makes me be-

lieve

lieve the Arch-Deacons were more moderate here than elsewhere.) For when *Lindwood* published his Provincial Canons, which was about the year 1423. it was not generally received in *England*, which was almost a hundred years after. But the certain time that Procurations here in *England* were turned into Rent I cannot find out: But the effect of this innovation was, that when Procurations were reduced to an annual Rent, the visitations were degenerated into an *Audit* of receipts, and called a Visitation where the Parson draws up a thing called a Presentment containing (*omnia bene*) which by the Church-wardens is delivered to the Visitor or his Deputy, and Procurations paid, and the Visitation is ended; when for the most part nothing is well, or as it should be: The Churches kept like Swine-styes (I beg pardon for the comparison, I wish it were not too true) the Floors broken up, the Windows broken down, the Church and Building belonging to the Parsonage and Vicarage Houses dilapidated, the Parson *non-resident*, Pews in the Church built so high and disorderly that the behaviour of the People therein cannot be observed, Books and Ornaments of the Church wanting or imbefiled; and it is not likely the Parson and Church-wardens should present these things, when themselves

themselves are commonly most in fault; and besides the Churches, the Churchyards how are they used, their Fences neglected, Swine rooting in them, much heaps thrown in them, and profane gaming and other debaucheries used in them, shame to see or hear of?

Causa 10. q. 1.
Relata est.

There was complaint in the Council of Toledo, *Quod quidam Episcopi negligebant suas parochias visitare singulis annis ad predicandum & ad confirmandos pueros, procuraciones tamen exigebant, ac si Ecclesias visitarent: quod ex avaritia & negligentia procedat.* There it was decreed in that Council, *ut hoc de cetero non faciant Episcopi, sed solícite & diligenter greges visitent, cupiditatem vitantes, & negligentiam dimittentes.*

Certainly if there was cause of such complaint in those days, there is much more now.

I do not speak this, as though it were now a Duty incumbent upon the Reverend Bishops to visit in person *Ecclesiasticum*; their age and great employments, and the Canon gives them leave to do it by their Substitutes the Arch-Deacons: but if their Lordships would be pleased to enjoin their Arch-Deacons to visit every third year *Ecclesiasticum*, when their Lordships hold their triennial visitations, and give their Lordships a personal account how they found all things, it would

work

work a great reformation in the miscarriages beforementioned; and the Archdeacons would certainly be ready to obey such a command, *Ne magis videantur lucrare pecuniariis inhiare, quam Ecclesiarum velle conservare statum, & salutem animarum querere*; and then it were reason they should have their Procurations that year also.

O hobon cap. naturalis dispositionis.

The same worthy Author that has brought me into this discourse, tells us of another charge by the name of *Pentecostals*, or *Whitsunday* Farthings; these are but a Charge upon some particular Churches, where by Custom they have been paid, and seem to be of the nature of offerings: But I have never met with any thing more of them, than what I have received from that learned Author.

Lastly I will conclude with an accidental, but a grateful charge, which is, That if the Founder or Benefactor to a Church, or their posterity, becomes necessitous, they are from the same Church to receive relief. *Si enim omnibus aliis* (says the Canon) *necessitatem sustinentibus pro solo religionis intuitu in usum res Ecclesie largiuntur, quanto magis consulendum est, quibus retributio debetur?*

4 Concil. Tol. c. 37.

All these charges and more the secular Clergy undergoes, which takes away a considerable part of their Revenues.

CHAP. XVI.

The Sixteenth Chapter shews, how far prescription will prevail in the manner of Tithing, and in what Cases the Parson, Vicar, &c. shall be bound by a modus decimandi.

The force of a modus decimandi in Tithing.

Linwood cap.

Quoniam propter verbo redemptionem.

Co. select cases. 46.

Dyer 79.p.49.

Common Law and Canon differ concerning Customs, &c.

THE Canonists, and those that are of opinion that Tithes are due *jure divino*, decry all Customs and Prescriptions that either diminish the tenth part, or acquit the whole; for in truth, no Custom or prescription, can be good which is positively against the Law of God.

And that is the reason why it is frequently said in our Law-books, that the Ecclesiastical Courts will not allow a *modus decimandi*.

But the Common Lawyers allow Tithes to be due *Jure Divino secundum quid*, that is, *quoad sustentationem cleri*, but not *quoad decimam aut aliquam aliam certam partem*; and therefore they allow of a manner of Tithing which diminisheth the *quantum*, or a Custom of not Tithing for this or that particular thing, so there be a sufficient maintenance for the Clergy besides: and of the same opinion are some of the most eminent School Men. And in this,

this, as in all other things where the Common Law, and Canon, or Ecclesiastical Laws differ, the Common Law is to be preferred; for no Canons are of force in *England*, which are contrary or repugnant to the Laws, Statutes and Customs of this Realm, or to the damage or hurt of the Kings Prerogative Royal; but all other Canons Provincial still remain in force, and are confirmed by a Statute made in the 25th Year of H. 8.

The difference between Custom and Prescription I have shewed before in the thirteenth Chapter.

But before I proceed upon this subject, I must beg leave of the Reader to say something more in vindication of the Common Law, which in this point I conceive does not differ materially from the Ecclesiastical and civil Law; for if I do not very much mistake the Canonists and Civilians, they do at this day allow of real compositions in discharge of Tithes, that is, where the Parson, Patron and Ordinary do by deed agree to accept of a certain Sum of Money yearly, or so much Land or other profit in discharge of the Tithes growing and arising upon such Lands as they agree for. Now what is this but a *modus decimandi*? and a prescription to maintain this *modus* is no more, than a supply

X

Tho. Aq. Sum.
2. 2^r. q. 87.
art. 1.

St. 25. H. 8.
Cap. 19. Fine.

1 Inst. 344. d.

*The difference
between Custom
and Prescrip-
tion.*

*The Common
Law vindica-
ted.*

Linwood c.
*Quoniam prop-
ter verb. Re-
demptionem.*

to

Seld. hist. Decim. 408.

P. 181.

Lindwood
cap. Quoniam
propter ver-

bo redemptionem. Consuetudo nec prescriptio iuvat Laicos quoad decimam prescribendum vel retinendum. cap. Quoniam ut audivimus verb. consuetudine locorum quod Laici minus solvant quam decimam, non potest consuetudine introduci, quia esset contra jus divinum.

The Parsons Counsellor : Part II.

to prove a real composition, which was made beyond all memory and lost; and it were against all justice and reason that if a man should be plundered of, or lose his Deeds, that he should thereby lose his Estate. And it must necessarily be intended, that every *modus decimandi* that has continued time out of mind, must have a reasonable and legal commencement, and must be intended that it began by a real composition.

A Rent charge cannot be created but by Deed, and yet it may be claimed by Prescription, supposing a Deed preceded: the like Law is of all Commons, &c.

Sir Thomas Ridley, a learned Civilian, in his view of the Civil and Ecclesiastical Laws, inveighs against Prohibitions, and the Common Law in Case *de modo decimandi*; and indeavours to insinuate to the Reader that the Spiritual Courts allow prescriptions *de modo decimandi*, and that the Common Lawyers do the Spiritual Courts great wrong to affirm the contrary. But he himself in the next precedent Section tells the Reader that a Prescription to pay less than a full tenth part, is both against the Canon

Law

Law, and against the Law of God it self. Now in every Prescription *de modo decimandi*, it is to be intended the rate Tithe was the full value of the Tithe at the time of the Original composition; for it cannot be presumed that the Bishop, Patron and Ordinary, would make a composition to the prejudice of the Church, and if the rate Tithe do not now reach the value, it is to be intended that either the Tithes are improved, or else that Money is now become of less value, *less value* which makes the present inequality.

Put the Case then, that in the time of H. 1. (for the purpose) the Lord of the Mannor of Dale made a real composition with the Parson of D. that he and his Heirs for ever, then after would pay to the Parson and his Successors Five pound yearly, for the Tithes of his Demesnes; and this composition was confirmed by the Patron and Bishop as it ought, and Five pounds was the full value of the Tithes at that time. I think it will not be denied me but this was a good real composition, and that if afterwards the Tithes had become of less yearly value, the Lord of the Mannor had been bound by the composition to pay the Five pound *per Annum*; then suppose on the other hand, that the Lord of the Mannor after this composition being thereby encouraged, made great improvement

of his Demefns, by which the Tithes are become of much greater yearly value, or that Money by the discovery of the *West Indies* (as the truth is) be become of less value: is there not then the same reason to bind the Parson, as to bind the Lord in the other Case? which being granted, as in all Justice and reason it must: and the Lord having no other evidence to make good his bargain but his composition, and that in the late Wars was plundered, or his House, and that by accident burnt, mislaid or imbevelled; shall he therefore lose his composition which he must now be forced to claim by Prescription (his composition being lost) because the Tithes are of greater yearly value than Five pound, as the Civilians would have him, or shall he be admitted to maintain his right by the Common Law. I appeal to the judicious and indifferent Reader which is more just? Now the Judges of the Common Law well knowing what the Judges of the Ecclesiastical Courts will do in this Case, and likewise that at this day there is no rate Tithe can come near the true value of the Tithe Wheat about the time these compositions were made, not being perhaps above Twelve pence or Two shillings a Quarter, and now for the most part twenty times as much (not because Wheat is of greater value

value than it was, but because Money is of less) they do in this case frequently grant Prohibitions to try whether there be such a Custom or no: and if they find there is no such Custom, they send the Cause back by consultation to the Ecclesiastical Court to be there determined; but if they find there be such a Custom, they will not trust the Ecclesiastical Judge any more with it, but leave the party to take his remedy for the *Modus* in the Ecclesiastical Court. And for the very same reason Prohibitions are granted upon real compositions. And by the Ecclesiastical Law Tithes are due of Mineral, Turfs, fishing in the Sea, &c. which the Common Law denies; and therefore if Suits be in the Ecclesiastical Courts for any of these things which are due by the Spiritual, but not by the Common Law, the Judges of the Common Law do grant Prohibitions to stay their proceedings.

And *St. German* in the Doctor and Student puts this Case, that if it were ordained for a Law, that all payment of Tithes from thenceforth should cease, and that every Curate should have a certain Portion of Land assigned to him, or a Rent or Annuity which should be sufficient for his maintenance and those that served under him, or that every Householder should give a certain sum to that

Lib. 2. cap. 55.
f. 167. a. 1.

use, that this were a good Law, and grounded his opinion upon this saying of Doctor Gerson a great Doctor in Divinity *Solutio decimarum sacerdotibus est de Jure Divino quatenus inde sustententur, sed quoad tam hanc vel illam assignare, aut alios in alios redditus commutare, positivi juris existet.*

And this commuting Tithes into annual Salaries is frequently practised in the Protestant Churches beyond Sea, as I have been informed.

Prescriptions are confirmed by Parliament.

Stat. 2. E. 6.
cap. 13.

And these Prescriptions *de modo decimandi* are not only allowed by the ancient Common Laws of this Realm, but confirmed by Act of Parliament.

For by the Stat. of 2 E. 6. it is enacted, that no person shall be sued or otherwise compelled to yield, give or pay any manner of Tithes, for any Mannors, Lands, Tements, &c. which by the Laws and Statutes of this Realm, or by any Priviledge or Prescription are not chargeable with the payment of any such Tythes, or that be discharged by any composition real. And having said thus much in vindication of the Common Law, I shall proceed to shew what Prescriptions and Customs, *de modo decimandi vel de non decimando* are good and allowed at Common Law.

who may not prescribe in non decimando.

First, no Lay-Man can prescribe in *non decimando* that is, to be discharged absolutely of the payment of Tithes, and

Chap. 16. Of Law of Tithes.

311

and to pay nothing in lieu thereof unless he begin his Prescription, in a Religious or Ecclesiastical Person, and derive a Title to it by Act of Parliament.

Seld. hist. decim. 409.
Rolls 1.653.

But all Spiritual and Religious Persons, as Bishops, Abbots, Priors, Deans, Prebends, Parsons, Vicars, &c. may prescribe in *non decimando*, and their Farmers may make use of such Prescriptions to free themselves from the payment of Tithes

who may prescribe in non decimando.
Winch. 65.
Brownl. 1. 31.
Co. 2. evesq;
Winchesters case.

And hence it is, that the Parson or Vicar of one Parish, that hath part of his Glebe lying in another Parish, may prescribe in *non decimando* for it, that is, as hath been said, to be free from the payment of any manner of Tithe for it.

Rolls 1.653.
H. 3. 5.
Rolls 1. 653.
H. 6.
Church wardens not.

But Church-Wardens who have Land belonging to their Churches cannot prescribe in *non decimando* because they are neither Religious nor Spiritual Persons.

It hath been held that a Bishop may prescribe that he and his Tenants for Life, Years, and Will, and his Copyholders have been freed from the payment of Tithes, the reason alledged is, because it might commence by a real composition for the whole Mannor. And in all Cases where a Spiritual Person prescribes in *non decimando* his Tenants

Rolls 1. 653.
H. 7.
A Clergy Man may prescribe for himself and Tenants.

Rolls 1. 653.
H. 4.
C. 2. 45. a.

Stat. 27. H. 8.
cap. 28.

Rolls 1. 654.
J. r. contra.
Hob. 309.

Rolls 1. 655. 12.
Patentee del
Roy.
Herley 52. 60.
Cro. Car. 94.
dubitatur
Brownl. 1. 31.
contra.

Cro. Car. 94.
Dubitatur, Ideo
quert.

and Farmers shall take the benefit thereof.

But if any of the Abbots, Priors, &c. that came to the Crown by the Statute of 27 H. 8. were discharged of the payment of Tithes by prescription *de non decimando*, yet the Patentees of these Lands shall not have the benefit of such Prescriptions, but shall pay Tithes.

Neither can the Kings Patentee be freed from the payment of Tithes of those Lands which the King whilst he had them in his own hand prescribed to be freed from the payment of Tithes, because it is a Personal discharge in the King, for the question arising upon Lands disafforested, there might be several reasons why he paid no Tithes, first, because the grounds were depastured with Beasts *feræ nature* for which no Tithes were due, or for that the King was not bound by the decretal Epistle of Pope Innocent the third, who settled the Parochial right of Tithes, or by reason the King being a mixt Person might prescribe *in non decimando*.

But the Kings Patentees of those Abby Lands that came to the Crown by the Statute of 31 H. 8. may take advantage of a prescription *de non decimando* in the Abbot, Prior, or other Religious Person by the force of that Statute, and the enjoyment of the lands since the dissolution

tion

tion freed from the payment of Tithes during memory, is a good proof *a posteriori*, that the Abbots, Priors, &c. held the same discharged from the payment of Tithes.

The Inhabitants of a County, Hundred or Country, as the wilds of *Kent* and *Sussex* may prescribe not to pay Tithes of Wood, Milk, or any other particular thing, so there be a competent Livelihood for the Clergy besides.

But every Lay-Man may prescribe *de modo decimandi*, That is, that such a Man being Lord of such a Mannor, and all those whose Estate he hath in the said Mannor, have from the time whereof the memory of man is not to the contrary, had and enjoyed to his and their own uses all the Tythes arising, &c. within the said Mannor, paying so much yearly to the Parson of *D.*

And a Lord of a Mannor may prescribe for himself, and his Copyholders, for they are part of the Demesns of the Mannor; or the Copyholder may prescribe in the name of his Lord.

If a *modus decimandi* be to pay two things, as two shillings for a Park, and a shoulder of every Buck kill'd in the Park, and all the Dear die or are kill'd up, yet notwithstanding the Prescription hold good for the two shillings.

A Countrey may prescribe in non decimando.

Lib. Intr. tit. prohibic.

Co. 2. 44. b.

Doct. and Sc.

12. c. 55. f. 166,

167. b.

174. b.:

Roll. 1. 653,

H. 10. 11, 12,

13.

Who may pre-

scribere de mo-

do decimandi

Co. 2. 44. a.:

b.:

Cro. El. 599.

758. 784.

Cro. El. 784.

Noy. 132.

Hob. 40. 41.

A modus to pay two things, and one fails.

But

Hob. 43.
Prescriptions
must not sleep.

Hob. 11.
Modus for
Houses.

Co. II. 162.

Hob. 11.

Quære.

Rolls I. 640.

b. 5.

Hob. 107.

* Rolls I. 651.

d. 16, 17, 18,

39.

Cro. El. 446.

Co. Select Ca-

ses 45.

More 454.

Noy 108.

Cumberlands
Case. per Rol.
P. 13. Jac. B.R.
what Prescrip-
tions de modo
decimandi.
2 Leo 70. are
good.

But every Prescription and *modus* must have a Continuance, for it cannot be good at one time, and asleep at another, neither can a wilful denial destroy a *modus decimandi*: and it is taken for a Rule in Dr. *Leyfield* and *Tisdale's* Case, that where no Tithes are regularly and legally due, as for a House, &c. there can be no *modus decimandi* alledged.

And yet it hath been held, that a Tithe by Prescription may be paid for a House, because it might be due for the Land before the House was built. *Ideo quære.*

A *modus* to pay Tithes without the view of the Parson is not good, because it conduces to fraud, and is now against an Act of Parliament.

So a *modus* that because you have paid your Tithe of your Cows, you have been freed of the Tithes of Oxen, Steers, Heyfers, &c. is not good, That is, to pay your Tithes in kind of one thing, thereby to free another Tithe.

But where Tithe is only due by Custom, as for Fish taken in the Sea, there less than a Tenth part may be good.

And it hath been held a void prescription to pay a Load of Hay yearly in discharge of all his Tithe Hay, that is to pay a part in discharge of the whole.

So for a Parishioner to prescribe that he, &c. has time out of mind repaired the Church, and by reason thereof hath been discharged of the payment of Tithes, is no good Prescription, for the Parson not being bound to repair the Church has no recompence, but if it had been, that he had repaired the Chancel, and in consideration thereof had been freed of the payment, of Tithes, that had been a good *modus*, *ratio patet*.

Rolls 1. 649.
d. 8, 9.

It hath been held a good Prescription, that the Parishioner hath time out of mind paid the Tithe Wool of all the Sheep he has shorn, though never lately bought in, and in consideration thereof hath been freed of the payment of the Tithe of those he had sold before Shearday.

Wool and Lamb.
Rolls 1. 648.
C. 1. 649. d. 7.

It hath been held a good Prescription to have paid the Tenth Fleece or Pound of Wool, so there were any allowance for the odd Fleeces or odd Weight.

Rolls 1. 648.
C. 4.

It hath been adjudged a good *modus*, that in consideration the Parishioner hath shorn and wound the Wool to be free of paying Tithes of the neckings and birtings without fraud.

Rolls 1. 649.
d. 5.

It is a good Prescription, that the Parishioner hath time out of mind paid a halfpenny for every Lamb sold before May-day, but if the Parishioner sell his Lambs

Rolls 1. 652.
g. 1.

Lambs fraudulently a few days before *Mayday* on purpose to defraud the Parson, &c. it is no good discharge.

Marsh. 79.º.

A Prescription to pay Wool in kind, if kept till Clipping day, but if sold before, to pay a half penny a Fleece, as Mr. Marsh reports, was held no good Prescription, *tamen quere.*

For Corn.

More 4:4.

It hath been held a good *modus*, that in consideration that the Parishioner hath mowed, reaped and shockt the Corn, and paid his Tithe in the shock, that he hath been freed of the payment of any Tithes of the Rakings, but as Sir Edward Coke says, there needs no *modus* as to Rakings without fraud.

Rolls 1. 648.
b. 6.

To prescribe to have paid the Tenth sheaf or shock as it falls out, is no good Prescription to free the Parishioner of any other Tithe, it being no more than is due.

Rolls 1. 649.
d. 4.

A *modus* that in consideration, that the Parishioner hath sowed, reapt, bound and set up the Corn one year to be free from the payment of herbage the next year of the same Land was held good, *tamen quere.*

Rolls 1. 650.
d. 11.

But it is no good consideration, that in consideration the Parishioner has plowed, sowed, mowed, cockt and set out the Tithes of part, that therefore he should be freed of paying Tithes of a small parcel left standing.

A man may prescribe to pay the Tenth Acre or Rood of Wood standing and the Parson, &c. cut it himself, as is used in some parts of *Lincolnshire*.

Wood.
Rolls 1. 648.
b. 7.

It hath been held a good *modus* to pay one Calf at seven, and if under, a half penny a peice, and if he sell any Calf to pay the Tenth part of the price, and it hath been held a good *modus* to pay Tithe Cheese from *Mayday* till *Michaelmas* to be discharged of the whole Tithe of the Cows, and no Tithe is due for Cheese but by Custom, and the labour of milking and makink into Cheese is added, whereas nothing but the Tithe of Milk is due by Law.

Calves and Milk.
Rolls 1. 648.
c. 2.
Rolls 1. 651.
d. 19.
Cro. El. 609.
786.

But it is no good *modus* to pay for every milch Cow two pence, and for every Calf one penny, in discharge of the Tithes of all other Cattle, but it is a good *modus* for the Calves and milk only; so a *modus* to pay a Tithe-Calf in satisfaction of the Tithe of all manner of Cattel is not good.

Rolls 1. 651.
d. 17.

A *modus* to pay thirty Eggs in Lent in satisfaction of all the Tithe of Eggs has been held a good *modus*.

Rolls 1. 651.
d. 18.
Eggs.
Rolls 1. 648.
c. 3.

It is a good *modus* that the Parson time out of mind hath had so much, or such a parcel of Meadow or Land in satisfaction and discharge of all the Tithes of Hay, &c. arising upon such Land.

Land in lieu of Tithes.
Rolls 1. 649.
d. 6.
Cro. El. 587.
8 E. 4. 14. a.

Headlands,
Balks, &c. and
Hay.
Rolls 650. d. 10.
Noy contra 15.

It is no good *modus* to be free from the payment of Tithe Hay arising upon Hades Balks, Greenslips, or Doals eaten by Beasts of the Plow, in regard the Parishioner hath sow'd, mown, reapt, shockt and prepared the Corn, &c. but the contrary hath been held, *idem quere.*

Hedley. 147.

But in consideration that the Parishioner hath made the Grass growing in such a Close, and then paid the Tithe of it, he hath been free of the payment of the Tithes of the balks and hades, has been held good.

Rolls 1.650. d.
13.

It is not a good *modus* that the Parishioner having spent all his Hay upon the Beasts of the plough, that therefore he should be free from payment of Tithe Hay.

Rolls 650. d.
13.

But a *modus* that in consideration the Parishioner hath cut, dried and shockt the Corn, he hath been freed from the payment of Tithe-Hay, has been held a good Prescription.

Noy 31.

A *modus* that the Parishioner hath time out of mind got Rushes and strewed the Church, and in consideration thereof hath been discharged of the payment of Tithe-Hay, has been adjudged no good *modus*, but if it had been to strew the Parsons Seat, or to deliver straw to the Parson to strew the Church, had been a good *modus*;

Cro. El. 276.

And

And it hath been held a good *modus*, that in consideration the Parishioner has made the Hay into Grass-cock, that therefore he hath been discharged of the Tithe of the aftermath; but Sir Edward Coke declares for Law, that there needs no *modus* to be alledged, but that aftermath is of it self freed from the payment of Tithes, and so I take it the Law is held at this day.

Rolls 1. 647.
b. 1. 2, 3, 4.
648. d. 1, 2.
649. d. 3. 4.
Hertley. 133.
Hob. 250.
More 9 o.
Cro. El. 660.

2 Inst. 652.

A *modus* to pay the tenth part of all the honey and wax of Bees killed, has been held a good *modus* for the Tithe of Bees.

Bees.
Rolls 1. 652.
d 15.

But there have been some opinions, that there is no Tithe due by the Law for Bees, because they are *fera natura*. But nevertheless by Custom they may be Tithable; and so they are in most places.

A Custom or Prescription to pay no Tithe for the Herbage of Beasts bred up for the Plow and Payl hath been allowed to be a good custom, but of this see more before in the fifth Chapter.

Herbage.
Bulst. 2. Price
vers. Mascall.
More 909.

It is no good *modus* that the Owner of the Land has paid all his Tithe for his Cattel there depastured, therefore to be free of the Tithe Herbage for guest Horses.

Guest horses.
Roll 1. 650. d.
14.

It hath been held that no Tithes shall be paid for the fewel spent in the dwelling Houses in the same Parish it grew,

Fewel.
More 909.

grew, without alledging any *modus* at all.

Cro. Car. 113.
Norton vers.
Farmer T. 4.
Car. 1. C. B.

But it should seem that in this last Case there needs no *modus* at all to be alledged, but that for the fewel spent in the Owners House in the same Parish, there is no Tithe due of Common right. *Ideo quare.*

Parks.
Rolls 1. 651.
c. 1, and 4.
Mascal vers.
Price: P. 13. Ja.
B.R. Hob. 39.
Hutton 58.

If a Man prescribe to pay six shillings and eight pence, for all the Tithes arising and happening in such a Park, and the Park is disparkt and turned to tillage, the Prescription is gone.

But if in this Case he had made his Prescription, that in consideration of six shillings and eight pence yearly paid to the Parson, &c. he had been freed of all the Tithes arising upon six hundred acres of Land called D. Park, this had been a good Prescription, and should have freed the Park.

So if the Prescription of a Park have been to pay six shillings and eight pence and a shoulder of every Bulck killed in the Park, in discharge of all Tithes arising within the same, in this case, though the Park be disparked, and no Deer left, yet the *modus* remains, and shall discharge the whole Tithes.

And it has been held a good *modus* to give a Buck and a Doe yearly to the Rector, &c. in discharge of all the Tithes arising within the Park, although they be

Rolls 1. 652.
c. 5.
More 909.
Boothby vers.
Reynels. M. 20.
Ja. B.R. M. 10.
Jac. ro. 641.
B. R.
Hutton 57.
Noy 146.

fire

jure nature: and it shall hold though the Park be disparked. Owen 34.
Noy 148.

But if the *modus* have been only for the herbage of the Park, and it be disparked and sowne with Corn the *modus* is gone. More 909.

If a Parson, &c. have had an Acre or peice of Meadow ground, time out of mind, in discharge of all the Tithe-Hay arising upon such a Farm, this shall only discharge the Hay upon the ancient Meadowing, and not the Hay of Ground converted from Pasture or Tillage to Meadowing. Modus for Land.
Hutton 38.

But if one have a *modus* for all the decem of his mannor, and erect a new mill, this shall be comprehended within the *modus* and shall not pay any Tithe. Rolls 1. 651.
c. 1.
2 Inst. 490.

But if a Man have a *modus* for all the Hay and Grass upon twenty acres of Land, and converts the same to Tillage, or into a Hop-yard, he shall pay Tithes thereof: * where a *modus* is alleged to pay a certain Sum to the Vicar in discharge of any Tithes due to the Parson, this being a dispute of the right between two Clergy-men, ought to be determined in the Ecclesiastical Court, but it seems to be a good *modus* as to the Parishioner, and so it was held in the Case of Pool and Reynolds in the Kings Bench. Mich. 10. Jac. Tithes due to the Parson.
Rolls 1. 651.
E. 2.

* Where a *modus* is alleged to pay a certain Sum to the Vicar in discharge of any Tithes due to the Parson, this being a dispute of the right between two Clergy-men, ought to be determined in the Ecclesiastical Court, but it seems to be a good *modus* as to the Parishioner, and so it was held in the Case of Pool and Reynolds in the Kings Bench. Mich. 10. Jac. Tithes due to the Parson.
More 907.
Cokes 51th Cases. 37.
Cro. El. 137.
Hutton 37.
10. Jac. 1. 641.
Modus to pay a rate to the Vicar for Tithes due to the Parson.
Y

But Mr. Ware reports a case to be adjudged H. 18. Jac. B. R. that it was no good *modus*, and that Henden vouched one Bankes Case to be adjudged accordingly. *Ideo quere*. But it seems a good *modus*, for this being Originally a *modus* between the Parson and Parishioner, the Vicar might be indowed with the *modus*, but this must be intended also where the indowment is time out of mind, and not to be produced, or where the Vicar hath it specially in his indowment.

Yelverton 86.
contr. Eulst.
3. 220.

Leonard 1. 94.
Croke El. 71.
Bulst. 1. 220.
Wincl. vers.
Child M. 14.
Jac. B. R.

A payment to the Parson by Custom may be good against the Vicar.

But to pay a rate to the Parish Clerk is no good discharge of Tithes against the Parson or Vicar, unless the Parson be bound by Custom to find the Parish Clerk, nor is a *modus* to the Parson a good discharge against the Vicar.

And so having shewed what Prescriptions *de modo decimandi*, and *de non decimando* are good and allowable at the Common Law, in the next place I shall shew how a *modus decimandi* or Prescription may be destroyed or lost.

CHAP. XVII.

The Seventeenth Chapter shews how a modus decimandi or Prescription may be lost or destroyed.

IF a Man have a *modus* for a Mill which is removed of necessity to a new place because the water *invito* has changed its course, here though the Mill be removed, the *modus* remains. Rolls i. 652. f. 1, 2. What matter will destroy a Modus.

But if the Owner of such a Mill shall of his own accord, and without any cause of necessity remove his Mill to a new place, in this case he shall lose his *modus*.

If a Man have a *modus decimandi* for two Messuages and two Mills to pay twenty shillings *per annum*, and he erects a new Mill in one of the Messuages, the *modus* shall not extend to free the new Mill. Rolls i. 652. f. 2.

There have been Opinions that Unity of Possession, that is, to have fee-simple in the Rectory, and likewise in the Land to which the *modus* is annexed, should destroy a Prescription or *modus decimandi*. Stepney vers. Warren P. 41. El. B. R.

Sir John Hollis
Case. T. 9. Jac.
b. R.

But if a Man have four Water Corn Mills for which he hath time out of mind paid a *modus* of four shillings *per annum*, and pulls down one of them, yet the *modus* remains, and he shall still pay the four shillings.

C H A P. XVIII.

The Eighteenth Chapter shews, by what Conveyances, and by what names Tithes may be granted, conveyed, demised, &c. and what Demises Parsons and Vicars may make of their Glebe and Tithes.

Stiles 261.

By what Conveyances Tithes will pass.

Hungerford
vers. Hawland.

T. 36. El. ro.
560. per Ow.
en. Cro. El. 814.

Regularly Tithes at this day cannot be granted or demised but by Deed in Writing under Hand and Seal, or by matter of a higher nature, as Fines, Recoveries, &c. But in such cases as they are become Lay-fee they may be devised by Will in writing as Lands may, but they cannot be granted by Copy of Court Roll, because they cannot be parcel of a Mannor.

But

But Tithes cannot be conveyed or demised by any parol agreement, unless it be to the Owner of the Land for one year by way of retainer: *and some opinions have been, that is, it is good for more years. *Ideo quare.*

Tithes impropriate are at this day by the several Statutes of dissolution become Lay-fee; and will pass by the name of Hereditaments, but by the grant of a portion of Tithes, the Tithes belonging to a Rectory will not pass.

There has been some Opinions that a man may without deed sell his Tithes to the Land-holder for more years than one, but not lease them without deed.

Tithes impropriate may be past from one to another by Deeds of Bargain and Sale, inrolled according to the Statute of 27 H. 8. they may be transferred in use upon good consideration by Deeds of Covenant to stand seised, or by Fines or common Recoveries, and may be sued for by Writs of Assise of novel disseisin, Writs of Entry, Writs of Right or other real Actions, or by *ejectione firme.*

But upon a Lease for Lives of Tithes, no Rent can be reserved to be recovered at or by the Common Law, for no Action of Debt will lie, or distress can be taken, & *ubi non est remedium, ibi non est jus.*

Brentymen
vers. Woodward. P. 31. El.
ro. 17. b. R. E.
Noy 89.
Heley 3.
Hughes 133.
Bellamy vers.
Bapthorp. M.
2 Car. ro. 179.
B. R.
Co. 4. 35 a.
* Yelverton
94, 95.
Latch 176.
Noy 81.
Yelverton 94,
95. Erown. 2.
11. *Ideo*
quare.

Stat. 32 H. 8.
cap. 7.

But upon a demise of Tithes for years a Rent may be reserved, because an Action of Debt will lye upon such Lease upon the Contract.

CHAP. XIX.

The Ninteenth Chapter shews, what barren Lands are free from the payment of Tithes within the Statute of 2 E. 6. cap. 13.

2 Ed. 6. ca. 13.

IN the Statute of 2 E. 6. there is a Proviso to this effect:

That all such barren Heath or waste Ground, other than such as be discharged from the payment of Tithes by Act of Parliament, which before this time have lain barren and paid no Tithes by reason of the same barrenness, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth after the end and term of seven years next after such Improvement fully ended and determined, pay Tithe of Corn and Hay growing upon the same, any thing in this Act to the contrary in any wise notwithstanding.

This

This Clause was added for the encouragement of Tillage and Improvement of lands by water or otherwise; and therefore though here be no words of discharge of the payment of Tythes, during the first seven years, yet by a reasonable intendment, the same shall be discharged from the payment of Corn and Hay, for the first seven years after the Improvement: and that is proved by the subsequent Clause, whereby it is provided,

2 Inst. 656.
Dyer 170. b.
P. 5.

That if any such barren waste or Heath-ground hath before this time been charged with the payment of any Tithes, and that the same be hereafter improved and converted into arable or Meadow, that then the owner or owners thereof shall during the seven years next following from and after the same improvement pay such kind of Tithes as was paid for the same before the said Improvement, any thing in this Act, &c.

Plow. 204. a.
396. b.

So that it appears plainly by this Provision, that it was the intent of the makers of this Law only to free these improved Lands from the payment of such Tithes as were produced by the improvement, which must be hay or Corn and no other.

Next, suppose a Man have barren Lands within this Law which are free from the payment of Tithes by prescription, real composition, &c. It should seem by the penning of the aforesaid

Proviso, that he should pay Tithes for the same after the seven years, this *Proviso* only providing for such Lands as are freed by Act of Parliament.

But that doubt seems cleared by the next precedent *Proviso* in this very Act, whereby it is provided.

That no Person shall be sued or otherwise compelled to yield, give or pay any manner of Tithes for any Mannors, Lands, Tenements or Hereditaments, which by the Law and Statutes of this Realm, or by any Privilege or prescription are not chargeable with the payment of any such Tithes, or that be discharged by any composition real.

So that this *Proviso* preserves all former legal discharges.

But the great question upon this Law is, what shall be said to be barren Heath or waste Ground within this Law, and Sir Edward Coke defines barren Land in these words,

Terra sterilis est terra infœcunda nullum ferens fructum. But that definition will not hold in this Case, for it does appear by the second *Proviso*, that such barren Lands are intended that are barren *quoad Agriculturam*, that is, such barren Heath or waste Ground that of its own nature, without improvement by Lime, Marle, Manure, &c. will not bring forth Corn or Hay.

But if Ground be no fit for Tillage,
yet

2 Inst. 655.
656.

Dyer 170. p.
5. Co. Ent. 462.
463.

yet if it be not *suapte natura* barren, it is not within this Law. As if a Wood be stubbed and grub'd up, and made fit for the Plough, and reduced to Tillage, it shall pay Tithes presently; for Wood-Ground is *Terra fertilis & Facunda*.

So if Marish, Meadow or other Land by neglecting to scour the Trenches or Sewers, or by sudden inundation be drowned; or if by ill husbandry or negligence fertile Land be over run with goss, whins, broom, fern, bushes, briars, &c; yet they shall not have the benefit of this *Proviso*, because of their own natures, they are fertile and apt for Tillage, and the Parson, Vicar, &c. shall not lose his Tithe by the ill husbandry of the Parishioner.

If Lands were barren Heath or waste Ground, at the time of the making of this Act, and were improved, and had or might have had the benefit of this Law, and after return to their barrenness, the Owner of such Lands shall not have the benefit of this Law a second time upon a second improvement: but I take the Law to be otherwise, if the Lands had been improved before the time of the making of this Law, and were then become barren again, for there I take it, upon a new improvement the owner of such Lands shall have the benefit of this Law.

Marish,

6 E. 6. per Bendloes.
2 Inst. 656.
Hill. 9. Jac. C.
B. ex motione Houghton,

2 Inst. 656.
More. 909.

Co. 10. 86. b.
Co. 6. 18. a.

More. 430.
3. Eulst. 163.
2 Inst. 656.

Marsh Lands new gained from the Seas, and Fen Lands gained from the fresh waters by draining, banking, &c. are not within the meaning of this Law to be freed from the payment of Tithes, during the first seven years after the gaining.

But the Determination of this point, which is or which is not barren Land within this Statute, commonly falls out to be determined by common Jurors, which notwithstanding the Direction of the Judge are seldom so favourable to the Church as they ought.

This *Proviso* only charges the payment of Corn and Hay after the seven years, and the second *Proviso* provides only for the payment of such like Tithes as were formerly paid before the improvement, for the first seven years after the improvement, and makes no provision for the payment of other Tithes, save Corn and Hay, after the seven years: So that it may seem to imply a discharge of all Tithes, but Corn and Hay after the seven years: But to this I answer, that there being several Laws both Statute and Canon made formerly for the due payment of Tithes, and no negative words in this Act, it shall not abrogate those Laws to the prejudice of the Church by implication,

27. H. 8. c. 20.
32. H. 8. c. 7.
confirmed by the
St. of 2. E. 6.
Canons provincial.
cap. *Quia*
quid maledi-
ctionis. cap.
Erroris damna-
bilis. cap. *Quo-*
niam propter.
cap. *Quoniam*
ut audivimus,
&c.

C H A P. X X.

The Twentieth Chapter shews, what a real Composition is, and in what Cases Lands shall be freed of the payment of Tithes by such Composition real.

THAT which we call a real Composition is, where the present Incumbent of any Church, together with the Patron and Ordinary do agree by Deed under their hands and seals, or by fine in the Kings Court, that such Lands shall be freed and discharged of the payment of all manner of Tithes. However, paying some annual payment, or doing some other thing to the ease, profit or advantage of the Parson or Vicar, &c. to whom the Tithes did belong: And these real Compositions have ever been held and allowed here in England to be a good Discharge of the payment of Tithes: And from these real Compositions it is intended, all Prescriptions *de modo decimandi* first took their rise and beginning, though I doubt most at this day have grown up from the negligence and carelessness

where Tithes shall be discharged by a real Composition, and what it is.

Co. 4. 44. a. 2.
2 Inst. 655.
Doct. & Stud.
l. 2. cap. 55.
f. ult.

Vide Lindw.
cap. *Quoniam*
propter verbo
Redemptionem,
Upon this
matter.

carelessness of the Clergy themselves.

And such Compositions may be made by the Parishioner alone without the Patron and Ordinary, but it then binds only for the life of the Incumbent, and will be avoided by his Resignation, Deprivation, or being absent eighty days in a year from his Cure, if he have Cure of Souls.

But it seems some of the Canonists and Civilians are of Opinion, that all Compositions between the Lay and Clergy to be discharged wholly of payment of Tythes, or to pay less in recompence than the full value, are invalid, but otherwise between Clergy-men; but by the common Law, which must govern here, there is no such difference allowed, but all real Compositions made as aforesaid are good and valid.

Hob. 176.

But note, that no Composition made by parol or word of mouth only, and not reduced into writing under hand and seal, is binding at all, unless it be upon Record as by Fine, &c.

13.El.cap.10.

But I conceive at this day no real Composition can be made to bind the Successor of the Parson or Vicar that makes the same, for they are now restrained by the Stat. of 13.El. to make any Grants other than for twenty one years, or for three Lives, with the other qualifications mentioned in the said Act.

So that it seems clear to me, that Parsons

sons and Vicars at this day, notwithstanding the confirmation of the Patron and Ordinary, cannot charge their Benefices or any thing belonging to them, other than for twenty one years or three Lives as aforesaid, and that only by Leases confirmed by Patron and Ordinary of things usually demised; whereupon the accustomed yearly Rent or more is reserved.

So that what has been said concerning real Compositions is only to be intended of such as were made before that and other later Statutes, for I take a real Composition at this day will only bind the Parson himself, whilst he is Parson Resident, and serving the Cure, *quod nota.*

And it hath been held that if there be two Proprietors or farmers of Tithes, that an agreement with the one shall bind his companion. More. 915.

C H A P.

C H A P. XXI.

*The One and Twentieth Chapter
shews, what Monastery lands are,
or may be free from the Payment of
Tithes.*

Jones 317.
188. Stat. 27
H. 8. c. p. 28.
*What Monaste-
ry Lands shall
be freed from
payment of
Tithes.*

IT is without Dispute, that none of the Abby and Priory Lands, that came to the Crown by the Statute of 27 H. 8. or before, are freed or discharged of the payment of Tithes by the Statute of 31 H. 8. c. 8. or by any other Law or Act of Parliament.

But in the Statute of 27 H. 8. there was a *Proviso*, that notwithstanding that Act the King might by his Letters Patents under the great Seal of England continue any of the said Monasteries, and that *Proviso* is left out of all the modern Prints, only *Rastal* in his abridging of that Statute makes some mention of it.

Now the Reader must observe once for all, that all Monasteries under two hundred pounds *per annum* were to have been dissolved by the Statute of 27 H. 8. and are therefore usually called the smaller Abbeyes, and those of two hundred pounds a year and upwards were

not dissolved till the 31 year of H. 8. and are commonly called the great Abbeyes.

And upon these two Statutes this Case lately hapned in the Exchequer Chamber between *Walklate* Farmer of the Rectory of *Utoxeter* in the County of *Stafford* to the Dean of *Winsor*, and *Wilshaw* owner of a Farm in that Parish, that was parcel of the possessions of the Abbey of *Croxden* in the same County, which was one of the small Abbeyes, and of the *Cistercian* order; which order was freed of the payment of Tithes, as shall be shewed hereafter, and this Abbey was discovered by the defendant *Wilshaw* to be continued by Letters Patents under the great Seal of *England*, and so not dissolved till the Statute of 31. H. 8. 31 H.8. c. 13. whereupon the defendant was dismissed, and the Court clearly held the Lands discharged of payment of Tythes by the Stat. of 31 H. 8. I mention this case for the singularity, not for any nicety in the Learning of it.

By the Statute of 31 H. 8. before mentioned, there is a clause to this effect.

That the King and his Patentees, which then had, or then after should have any Monasteries, Abbaties, Priories, Nunneries, Colleges, Hospitals, Houses of Friars, &c. or any Mannors, Lands, &c. which did belong to them, should have, hold, retain, keep and enjoy the said Mannors, &c. according to their

The Clause of 31 H. 8. that frees Abby Lands.

their Estates & Titles discharged & acquitted of the payment of Tithes as freely and in as large and ample manner as the said Abbots, &c. or any of them had held, occupied, possessed, used, retained, or enjoyed the same, or any part thereof at the days of their dissolution.

And the Reader is to observe, that the Abbots, &c. at the time of their dissolution held their Lands discharged four manner of legal and regular ways which were allowed by the laws of this Realm, to wit,

1. By the Bulls of Popes. 2. By real Compositions with the Parson, &c. Patron and Ordinary. 3. By Prescription, And 4. By Order.

But there is another sort of discharge, though not a legal one, has been allowed in this case to make a fifth sort of discharge, and that is perpetual unity, where the Abbot has had the Rectory of any Church and lands in the same parish time out of mind, which have been held free from the payment of Tithes by all the time of memory, and of these several discharges I will speak in order.

Bulls.

And first of discharges by the Popes Bulls it is to be understood, that when the Pope usurped a power over the Clergy here in England, he did at his pleasure grant Exemptions to this or that Abbey, or to whom else he pleased to be freed

freed from the payment of Tithes which was allowed as a good discharge against the Parsons and Vicars, who in many places suffer by these Bulls to this day, these Bulls being turned into prescriptions, &c.

The second sort of discharges was by real Compositions between the Parson or Vicar, and the Abbots, Priors, &c. *Real compositions.* confirmed by the Patron and Ordinary: of these we have spoken at large before in the twentieth Chapter, and therefore shall not repeat it, but pass to the third sort of discharges.

The third sort of discharges is by Prescription, of which we have likewise spoken at large before in the sixteenth chapter to which I shall refer the Reader.

I shall only observe to the Reader again in this place, that the Abbots, Priors and other Religious persons might prescribe generally to be free from the payment, or to be discharged of the payment of Tithes without any recompence to the Parson, &c. but a Lay-man could not prescribe absolutely to be free from payment of Tithes, but *sub modo*, that is paying or doing something to, or for, the Parson, Vicar, &c. in recompence and satisfaction of the Tithes, as you may at large see in the chapter here before.

And it is to be observed, that no Abbot, Prior, &c. could make any such Prescription by the common Law, that was

not founded before the time of memory, that is before the first year of R. 1. which is the time of the limitation of all Prescriptions at the common law, which rejects the practice of the civil law, which as should seem allows the limitation of a prescription or custom to forty years.

2 Inst. 653.

It may reasonably be demanded, how this manner of discharge can be made out at this day, since there is now no Person living, that can prove how the Abbots held and enjoyed their Lands; to which I answer, that what was done before the dissolution of Abbeyes must now be proved by what has been done since; for if Monastery Lands have been held all the time of memory since the dissolution, freed from the payment of Tithes, it shall be intended, that they were so held before; and therefore they have not paid or been questioned since.

Discharge by
Order.

The fourth sort of discharge is by order, and this discharge also for the most part depends upon Popes Bulls or grants, who at pleasure granted exemption to to what orders they pleased.

causa. 16. q. 1.
decimis.
2 Inst. 652.
Seld. Hist. decim. 120.

About the Year of our Lord 1150. the most Religious orders then in being were discharged of the payment of Tithes; but about that time Pope Adrian the fourth reduced them to Cister-tians; Hospitaliers and Templers, and about the Year 1215. Pope Innocent the third

Decret. Grego-
rii ex parte tua

third added the *Præmonstratenses*. But the Priviledges granted to these orders extended only to the Lands, these orders held in their own manurance, and not to any which was held by their Tenants or Farmers.

Seld. de decim. 406.

Dyer 277. 278.

causa 16. q. 1.

c. 2. Decim. &

i bi questi sunt

But about the beginning of the Reign of H. 4. the *Cisterians* attempted to have enlarged their Priviledge to their Tenants and Farmers, which tending to the ruine of many poor Parsons and Vicars that had cure of Souls, was complained of in a Parliament held in the second year of H. 4. whereupon it was enacted, that not only the *Cisterians*, but all other orders that put any Bulls in execution for the discharging any of their Lands from the payment of Tithes in the hands of their Tenants and Farmers, shall incur a *Premunire*, that is, forfeit all their Goods and the profits of their Lands during life, and be likewise imprisoned during the offenders life: which gave such a check to that proceeding, that I do not find any thing of that nature after attempted.

H. 4. cap.

The Templers after in the Council of *The Templers* Vienna which was held in the year of 2 Inst. 432. our Lord 1311. and in the fourth year of E. 2. were condemned for Heresy, And all their possessions by act of Parliament made in the 17 year of the same King, were transferred to the *Hospita-*

Stat. 17. E. 2. c.

32 H. 8. c. 24.

Kelway. 174. a.

where the lesser
Abbeys may be
freed of Tithes.

Jones. 3.

liers or Knights of St. John of Jerusalem, who enjoyed them till the thirty second year of the Reign of King H. 8. at which time by act of Parliament they were settled upon the Crown.

But where it is said in *Kelway* that the *Templers* were condemned of heresie in the 8 year E. 2, and their Lands given the same year to the *Hospitaliers*, it is a great error; for it is clear, that the Council of *Vienna* was held in the fourth year of that King, and chiefly called against the *Templers*; and it is as clear that their Lands were not here in *England* settled upon the *Hospitaliers* till the seventeenth of the same King.

And though the Lands of the lesser Monasteries be not within the benefit of the Statute of 31 H. 8. to be freed of the payment of Tithes; yet they ought to enjoy all such priviledges as are annexed to the Land, and therefore such lands in whose hands soever they come, shall be freed of the payment of Tithes; by real compositions and prescriptions *de modo decimandi*, but not by prescriptions *de non decimando*, unity of possession, order or Bulls of Popes: but in all those cases the Parsons and Vicars have the advantage by the dissolution of all those Abbeys that were dissolved by the Statute of 27 H. 8. For the Parsons and Vicars shall in such case be restored to their Tithes,

Tithes again, which in all Justice they ought in all other cases if the Parliament had been pleased.

The lesser Monasteries, that is, which were under 200 *l. per annum* of the orders of *Cisterians* and *Premonstratenses* were, as has been said, dissolved by the Statute of 27 H. 8. have lost the Priviledge of being discharged of the payment of Tithes, unless they were continued as the Abby of *Crouden* was; but those Monasteries of those orders that came to the Crown by the Statute of 31 H. 8. retain the priviledge of those orders in not paying Tithes. But this is to be understood only for such time as the Owners hold them in their own manurance; for if they let them out to Tenants, they shall have no more priviledge than the Tenants of those orders of the *Cisterians* and *Premonstratenses* had, which was none at all.

But note, that if the King after the dissolution of the lesser Monasteries (which had been of any of the orders that were discharged of the payment of Tithes) had granted any of their Lands to any of the greater Monasteries which were not dissolved till the Statute of 31 H. 8. yet those shall not retain the Priviledges the Abbots had at the time of the former dissolution; the right

Jones 2, 3, &c.
Cro. Jac. 607.
Hob. 306.
Lands of the lesser Abbeys granted to the bigger not freed.

immediately reverting by the dissolution to the Parsons and Vicars to whom the Tithes of Right did belong, the greater Abbeyes could not hold them legally discharged at the time of the second dissolution: So that there is a manifest difference between this and the case of *Walklate* and *Wilshaw* before remembred, for in that case the Monastery was continued and not dissolved till the Statute of 31 H. 8.

Lands purchased after the Priviledges granted, not freed.

Conc. Lateran. 4.

can. 55.

Seldens *hisl. of Tithes* 121.

And it is to be observed, that no Lands acquired by any of the Monasteries of those orders which were so freed from payment of Tithes after the Council of *Lateran*, which was in the Year of our Lord 1215. and by consequence none that were founded after that Council, are discharged of the payment of Tithes either in their own or their Tenants hands; for by that Council the Priviledge was limited to such Lands as these orders had at the time of that Council.

Dyer. 277. b.:

p. 60.

Cro. Jac. 559.

And although any Abbey Lands of the great Abbeyes which were of the *Cistercian* and *Premonstratensian* orders were in the hands of Tenants for years at the time of the dissolution, yet the King and his Patentees after the Leases determined shall hold them discharged, whilst the Patentees and Owners hold them in their own hands, but the Kings Tenants shall hold them discharged because of the Royal

Royal Prerogative of his Person not being intended fit for Husbandry.

Having now said thus much of the four legal manner of discharges beforementioned, I shall proceed to that of perpetual unity, which cannot be said to be a legal discharge of the payment of Tithes: Yet because the Abbots, Priors, &c. at the time of the dissolution held the Lands discharged of the payment of Tithes, though not legally discharged of Tithes, it hath been resolved by many Judgments and settled, that this is a good discharge within the meaning of the foresaid clause of 31 H. 8. Now that which we call a perpetual unity is, as hath been said, where an Abbot, Prior, &c. time out of mind hath been seized of the Lands out of which the Tithes arise, and the Rectory within which Parish the Lands lie.

And it is to be observed that every perpetual unity, that shall discharge the lands from the payment of Tithes, must have these four qualities.

First, it must be *justa*, that is, by good and lawful Tithes.

Secondly, It must be perpetual, that is, the Abby must be founded and endowed with the land and Rectory before the time of memory, which by the rules of the Common Law, as has been said, must be before the first Year of R. 1. for if by any Records, Deeds, or other legal

§ Perpetual unity.

Co. 2. 47. b. & c.

Co. 11. 14. b.

Dyer 349. p. 16

More 528.

Hob. 311.

306. 298.

300.

2 Inst. 655.

More 46, 47.

Cro. Jac. 608.

Definition.

Co. 11. 44. b.

Hob. 300.

and good evidence it can be made appear, that either the land or Rectory came to the Abbey since the said first year of R. 1. the union is not perpetual: and yet if the appropriation be ancient, as in the time of E. 4. or before, though the lands cannot be discharged upon the score of perpetual unity, yet they may by prescription, if in truth the lands were held discharged of the payment of Tithe.

Thirdly, such unity as shall discharge lands of the payment of Tithes within this Law, must be *equalis*, that is, the Abbots, Priors, &c. must be seized in fee-simple as well of the Lands upon which, &c. as of the Rectory.

Lastly, such unity must be *libera*, that is, free from the payment of any manner of Tithes; for if their Farmers at will, years, &c. have paid any manner of Tithes to the Abbots, Priors, &c. or their Farmers of the Rectories, the perpetual unity will not serve, And therefore where such perpetual unity is pleaded in discharge of Tithes, the adverse party may reply, that the Tenants or Farmers before the dissolution paid some sort of Tithes, and so avoid the perpetual unity.

Having first given the Reader satisfaction that all the Lands that came to the Crown by the Statute of 27 H. 8. and before, can have no benefit of the discharge given by

Cro. Jac 454.
Co. 2. 48. a.

by the Statute of 31 H. 8. and having also shewed how many ways Lands may be discharged from payment of Tithes that came to the Crown by the said Statute of 31 H. 8. It rests now that I should say something of those Lands that have since come to the Crown by the Statutes of 32 H. 8. cap. 24. 37 H. 8. cap. 4. and 1 E. 6. cap. 14.

It is a Rule taken in the Archbishop of *Canterburies* Case, that neither the Letter, nor the meaning of the Statute of 31 H. 8. extended to free or discharge any Lands from the payment of Tithes, save those that came to the Crown by that Act; for as that Book says, it is absurd that the branch of the Statute of 31 H. 8. concerning Tithes, should be extended to a future Act, that the makers of the Statute of 31 H. 8. without the Spirit of Prophecie, could not have the prescience of.

Co. 2. 47. a.
How other
Lands stand
that came not to
the Crown by
31 H. 8.

And as to those that came to the Crown by the Statute of 32 H. 8. c. 24. It was adjudged in the Case of *Spurling* and *Quarles*, that they are not discharged of the payment of Tithes.

More 913.
Cro. Jac. 57.
Hill. 2 Jac.

And after in the Case between *Urrey* and *Bowyer* 8 *Jacobi* in the Common Pleas this point was moved again, and the Court was divided.

Jones 182, &c.
Larch 89.
Hughes 392.
Bridgm. 32.

But there is a latter Judgment that seems to oppose these former resolutions, it

it was between one *Wilton* and Sir *Richard Weston*, that was after Lord Treasurer. *Trin. 4. Car. 1. B. R.* and the question was, whether those Lands of the Hospitaliers that came to the Crown by the Statute of 32 *H. 8. c. 24.* were discharged of the payment of Tithes by that Statute of 32 *H. 8.* or by the former Statute of 31. and in that Case *Dodridge* and *Jones* Justices, held that they were discharged within the Statute of 31 *H. 8.* and they did in effect deny the Books before cited to be Law, the Chief Justice *Hide* was of opinion that they were not discharged by the Statute of 31 *H. 8.* but by that of 32. So that by their three opinions the defendant Sir *Rich. Weston* had Judgment; but *Whitlock* was of opinion that those Lands were not discharged of the payment of Tithes by the one Statute or the other: now upon the whole matter I shall submit to the Judicious Readers Judgment whether this latter resolution be of any weight to shake the former resolutions, since in this case though there were three for giving Judgment for the Defendant, yet to the point controverted upon the Statute of 31 *H. 8.* there were two against two, and that they were not discharged by the Statute of 32. there were three against the chief Justice *Hide*. So that I conceive the Law remains according to the former resolutions, that there are no Lands

Lands freed from the payment of Tithes by any Statute, but those that come to the Crown by the Statute of 31 H. 8. *ta-men inde quere,*

I must confess I have met with no Judgments upon those Lands which came to the Crown by the Stat. of 37 H. 8. but those being the same with those that came to the Crown by the Statute of 1 E. 6. ca. 14. I conceive neither those that came to the Crown by either of those latter Statutes have any priviledg at all, and it is agreed in that very case of *Wiston* and *Weston*, that those Lands that came to the Crown by 1 E. 6. could not have any benefit by the clause of discharge in the Statute of 31 H. 8.

Jones 185.
Co. 2. 47. a.

So that I shall conclude, that there is no Land can have any priviledge at this day to be discharged of Tithes that belonged to the Abbots, Priors, &c. but such only as came to the Crown by the Statute of 31 H. 8. cap. 13.

C H A P. XXII.

The Two and Twentieth Chapter shews, what Personal Tithes are, and in what manner they are payable.

Lindwood ca.
Quo iam
propter verb.
decimæ perso-
nales.
*What personal
Tithes are, and
where payable.
The Canon.*

THE Canonists define personal Tithes thus.

Decimæ personales sic dicuntur, quia potius in respectu persone solvantur quam rei, ut puta de artificio, negotiatione & militia. And by the Canon.

Verbo negoti-
ationis.

Decimæ personales solvantur de artificio & mercatoribus, scilicet de lucro negotiationis, similiter de carpentariis, fabris, cementariis, Textoribus, pandaxatricibus, & omnibus aliis operariis stipendiariis, ut videlicet dent decimas de stipendiis suis, nisi stipendiarii ipsi aliquid certum velint dare ad opus vel ad lumen Ecclesie, si Rectori ipsius Ecclesie placuerit. And Mr. Lindwood in his Gloss adds,

Et scias quod in istis decimis mere personalibus, quæ considerantur ex solo lucro, deducuntur expensæ tam in re quam circa rem & extra rem factæ. Et nota, quod de solo lucro debetur hæc decima; unde si emens mercem eam non vendat, sed donet vel sibi retineat, non tenetur decimare, quia non lucratur.

So that it appears by the Canon Law, that every one ought to pay for a personal Tithe a tenth part of all his clear gains, deducting all his charges and expences for a personal Tithe; but if a man buy Merchandizes, and do not sell them to profit, or give them, or make use of them himself, no Tithe is to be paid, because there is no gain made of them.

Now let us see, what the Statute of 2 E. 6. says to us concerning personal Tithes; and by that Statute it is enacted,

That every person exercising merchandizing, bargaining, and selling, clothing, handicraft, or other art or faculty, being such kind of persons, as then before within forty years had accustomably used to pay such personal Tithes, or of right ought to pay (other than such as be common Day-labourers) shall yearly pay for his personal Tithes the tenth part of his clear gains, his charges deducted.

The Statute for personal Tithes.

And where handicraft men have used to pay their Tithes within this forty years, the same Custom of Tithes is to be observed; and if any Person refuse to pay his personal Tithes, &c. it shall be lawful to the Ordinary of the same Diocess to call the same Party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the Parties own corporal Oath concerning the true payment of the said Tithes.

This

This Act of Parliament restrains the Canon Law in two things; first, where the Canon was general, that all persons in all places should pay their personal Tithes, the Act restrains it to such kind of persons only, as have accustomably used to pay the same within forty years before the making of the Act. Secondly, whereas by the Ecclesiastical Laws they might before this Act have examined the Party upon his Oath concerning his gain; this Act restrains that course, so that the Party cannot be examined upon Oath; and by this Act the day-labourer is freed of the payment of his personal Tithes.

It cannot be intended upon this Act, that if such Tithes have been sometimes paid within forty years, that they are therefore due, but they must have been accustomably, that is constantly paid for forty years next before the Act.

And if it be demanded how such payment must now be proved forty years before the making of the said Act? I answer, as in other like cases *a posteriori* by what has been done all the time of memory since the Act.

There has been some question amongst the School-men and Canonists, whether personal Tithes ought to be paid of unlawful gain, to which you shall hear what a great School-man and Doctor says:

Quod

Quod si aliqua male acquiruntur dupliciter uno modo, quia ipsa acquisitio est iniusta, puta quæ acquiruntur per rapinam, furtum seu usuram, quæ homo tenetur restituere, non autem de eis decimam dare, tamen si aliquis ager sit emptus de usura, de fructibus ejus tenetur usurarius decimas dare, quia fructus illi non sunt de usura, sed ex Dei munere: quedam vero dicuntur male acquisite, quia acquiruntur ex turpi causa, sicut de meretricio & histrionatu, & aliis hujusmodi, quæ non tenentur restituere unde de talibus tenentur decimas dare, secundum modum aliarum personalium decimarum, tamen Ecclesia non debet eas recipere, quamdiu sunt in peccato, ne videatur eorum peccatis communicare, sed postquam penitentur, possunt ab eis de his recipi decime.

So that by this great Doctors opinion it seems, that of ill gotten gain, of which restitution ought to be made, no personal Tithe is due, and yet if by ill gotten gain a field be purchased, Tithe ought to be paid of the fruits thereof: but of ill gotten gain, where no Restitution is to be made, there Tithes ought to be paid, but not received by the Church, till the sinner have repented him of the evil, and after such repentance the Church may receive them.

These personal Tithes are accounted amongst the offerings, of which we are to speak next, and ought by the Parishoner

Tho. Aquinas
Sum. 2. 2æ. q.
87. art. 20.
*whether due of
ill gotten profit*

Lindwood. ca.
Quoniam
propter verb.
injuste acqui-
sit. *in the Gloss*
& Greg. decret.
cap. ex trans-
missa *in the*
Gloss verbo
injuste.

The Parsons Counsellor: Part
to be offered to the Church where due
but I am of the opinion of him, that said

*He decime personales magis difficultate
& subtilitate quam utilitate existunt.*

Rolls i. 646.

a. 1.

It hath been resolved, that Servants
in Husbandry shall not pay any personal
Tithe:

Hawking, Hunting, Fishing, Fow-
ling, &c. fall under these rules of per-
sonal Tithes.

CHAP. XXIII.

*The Twenty Third Chapter shews,
what Oblations, Offerings, &c.
are, and where due.*

*Oblations and
Offerings what,
and where due.*

Offerings are defined by the Cano-
nists to be.

*Quaecunque a piis, fidelibus Christianis
offeruntur Deo & Sanctæ Ecclesiæ, sive res
soli, sive mobiles sint, nec refert an legan-
tur Testamento, aut aliter donentur.*

It should seem, that in the time of Po-
pery there was an expectation, that eve-
ry one present at Mass should offer some-
thing; for St. Gregory tells us, *Quod om-
nis Christianus procuret ad missarum solen-
nia aliquid Deo offerre.*

Greg. 78. ha-
betur de Con-
secrat. div. 1.

And

And by a Canon in the Council *Matise* is decreed, *ut omnibus dominicis diebus altaris oblatio ab omnibus viris & mulieribus offeratur, tam panis quam vini, ut per has immolationes, &c.*

Can. 4.

But *Becanus* a learned Jesuite is more moderate; for he tells us, *Quod nemo tenetur ad illas Oblationes, nisi vel necessarie sint ad sustentationem ministrorum, vel consuetudo ad eas alicubi obliget.*

Becan. Sum. Theol. 3. q. 86.

And these Offerings belonged properly to the Priest or Minister of the Church or Place where they were made; for so is the Canon of Pope *Damasus*.

Can. Damas. Pap. Et habetur. 10. q. 11.

Quod Oblationes quæ intra sanctam Ecclesiam offeruntur, tantummodo Sacerdotibus qui quotidie servire videntur, licet comedere & habere, &c.

But it should seem, that private Chapels carried away many of the offerings belonging to the Mother Churches, to avoid which *Oshobon* the Popes Legate here made a Canon to remedy that mischief to this purpose,

Quod Capellani ministrantes in Capellis hujusmodi, quæ salvo jure matricis Ecclesie sunt concessæ, universas Oblationes & cetera quæ ipsis non recipientibus ad Ecclesiam matricem provenire deberent, ipsius Ecclesie Rectori sine difficultate restituant, cum illud tanquam alienum jure nequeant retinere. Si quis autem restituere contempserit, suspensionis vinculo, quousque restituerit, se noverit innotatum.

Cap. De Oblationibus.

A a

So

So that it seems by this Canon, that Chappels that had parochial Rights, the Chaplains of them might retain the offerings, but where the parochial Rights were saved to the Mother Church, the Chaplains of such Chappels were to account to the Rector of the Mother Church for the Offerings made at such Chappels.

There was another Canon made by Simon Mepham Archbishop of Canterbury, and his Clergy in the year of our Lord 1328. reciting.

Cap. Quia quidam maledictionis, &c.

Quia quidam maledictionis filii in nobentium solennis, purificationibus mulierum, mortuorum exequiis, & aliis, in quibus ipse dominus in ministrorum suorum personis solebat oblationum libamine populariter honorari, ad unius Denarii, vel aliterius modice quantitatis oblationem, populi devotionem restringere sunt moliti, residuum oblationis fidelium suis pro libito, vel alienis usibus multoties applicantes: Presentis declaratione Consilii declaramus & pronunciamus, omnes & singulos in premissis, vel eorum aliquo impostero delinquentes, vinculo majoris excommunicationis involvi.

So that upon the whole matter it appears, there were some offerings free and voluntary, which the Parishioners or others were not bound to perform, but *ad libitum*. There were others by Custom

from certain and obligatory, as those for Marriages, Christnings, Churching of Women, Burials, &c. and that these were all due, and belonged to the Parish Priest or Minister, that officiated at the Mother Church or Chappels, that had parochial Rights; the other Chappels that had not parochial Rights, were to account to the Rector for the Parish Church: now let us see, what the Statute of 2 E.6. says, by which it is enacted,

That all and every Person or Persons, which by the Laws and Customs of this Realm ought to make or pay their offerings, shall yearly from thenceforth well and truly consent and pay his or their offerings to the Parson, &c. of the Parish, or Parishes, where it shall fortune or happen him or them to dwell or abide, &c.

2 E.6. c. 13.
The Statute for Offerings.

Those Offerings which were free and voluntary are now vanished, and are not comprehended within this Law; but those that were customary and certain, as for Communicants, Marriages, Christnings, Churching of Women and Burials, are confirmed to the Parish Priest, Vicars and Curates of the Parishes, where the parties live that ought to pay the same; and they are only recoverable in the Spiritual Court, or an Action (I conceive) may be formed upon this Statute at Common Law.

C H A P. XXIV.

*The Twenty Fourth Chapter shews,
what Mortuaries are, and in what
Cases they are due at this day, and
how much is to be paid for the
same.*

*where, and
what is due for
Mortuaries.*

*Cap. Statutum
& infra, &c.
The Canon.*

BY a Provincial Canon made by Simon Langham Archbishop of Canterbury and his Clergy, in the year of our Lord 1378. It was decreed.

Quod si decedens tria vel plura cuiuscunque generis in bonis suis habuerit animalia, optimo cui debitum de jure fuerit reservato; Ecclesie sue, a qua Sacramenta recepit, dum viverit, sine dolo fraude seu contradictione qualibet pro-recompensatione subtractionis decimarum personalium, nec non & oblationum, secundum melius animal reservetur post obitum pro salute anime sue Ecclesie sue hujusmodi liberandum: quod si duo tantum in bonis decedentis extiterint animalia, de mansuetudine Ecclesie exactio qualibet nomine mortuarii remittatur: quodque si Mulier viro superstite obierit, ad solutionem mortuarii minime coerceatur; Sed si post obitum mariti, in domo cum familie regimine vidua per annum supervixerit, juxta formam superius

t II.
per
ems,
what
and
the
Si-
Can-
ar of
unjust-
ani-
merit
ments
feu
tions
nee
ani-
ani-
eran-
dece-
etua-
mor-
viri
uarii
ma-
idua
a su-
eriu

perius scriptam ad mortuarium obligetur :
Hac autem interpretatione, consuetudini
laudabili super mortuariis in nostra pro-
vincia aliter observare nolumus præjudici-
um generari ; quin si decedens numerum
huiusmodi animalium habuerit seu non ha-
buerit virve aut uxor prius vel post deceffe-
rit, super præstatione mortuarii consuetudo
Ecclesiastica observetur : ad solutionem au-
tem debiti de jure vel consuetudine mor-
tuarii rennentes, volumus per ordinarios lo-
corum censura Ecclesiastica coarctari.

How far this Canon was obeyed in
England I can give no account, but I
have not found the English willing to
have their Estates taken from them by
Canons, nor have found that any prohi-
bitions have been granted in case of
Mortuaries; nor have I observed any
complaints in Parliament against them
(save that 2 R. 2. It is pray'd that Par-
sons and Vicars might not require Mor-
tuaries of the Armour of any Man; but
that it might remain to their Executors)
till the 21 H. 8. and then they were set-
tled by Statute as follows,

1. That no Man should pay a Mortuary
unless he died possessed of Goods to the va-
lue of ten Marks, that is, six pounds thir-
teen shillings and four pence.

2. That no Mortuary should be paid or
demanded, but in such places where they
have used to be paid or given.

Stat. 21 H. 8.
cap. 6.
The Statute for
Mortuaries.

3. That they should be paid but in one place, and that at the parties most usual dwelling and habitation, and there but one Mortuary, and that after the rate following, that is say.

4. That if the decedent at the time of his death, had in moveable Goods to the value of ten marks clearly, his debts first paid and under the sum of thirty pounds, then he should pay three shillings and four pence and no more, and this must be in moveables, and not in Chattels as Leases for Years, &c.

5. That if the decedent died possessed of moveables of the value of thirty pounds, and under the value of forty pounds, to pay six shillings and eight pence for a Mortuary.

6. If the Decedents Goods be of the value of forty pounds or upwards, then to pay ten shillings for a Mortuary.

7. That no married Woman, Child, or Person not keeping House should pay any Mortuary, nor a wayfaring Man, or other that was not resident where he died, but those to pay where they were last resident.

8. The Parson or Vicar are not by this Act barred of any Legacy given, or offering to be made to them.

9. No Mortuary to be paid in Wales, Callis or Barwick, or in the Marces of Wales, but where accustomed.

10. It is provided that the four Welch Bishops, and the Archdeacon of Chester may, notwithstanding this Act, take their accustomed Mortuaries.

11. That where less hath accustomedly been taken for Mortuaries than is limited by the Act, there no more than is due by the Custom shall be taken.

Sir Edward Coke is of opinion that there were no Mortuaries due before this Act by any Law, but by Custom only; by reason of the words in the Statute of *Circumspicte Agatis* which are, *hi mortuarium dare consuevit, &c.*

This duty was formerly only suable for in the Court Christian, but now I conceive an Action of Debt will lye at Common Law upon this Statute, for though this Statute is only negative, that they shall not take above such rates, yet it implies an affirmative, as the Statute of 2 E. 6. for barren Grounds, and the Statute for the Sheriffs Fees and other Statutes.

But if a Suit be commenced for a Mortuary in the Spiritual Court, no prohibition shall be granted to stay their proceedings there, unless they proceed contrary to the Statute.

For those Mortuaries that Prelates anciently paid to the Kings of this Realm, I shall not trouble the Reader with, but

2 Inst. 491.
Mortuaries due
only by Custom.

Jeoffries vers.
Wood. Hill. 22,
and 23 Car. 2.
B. R.

Mortuaries to
the King by
Bishops.

refer those that are curious to inform themselves, to Sir *Edward Coke's* Commentary upon *Magna Charta*, and his Jurisdiction of Courts.

2 Inst. 491.

4 Inst. 338.

10 H. 4. 1. b.

In the Tenth of *Hen. 4.* A Vicar claimed a Mortuary by Custom, and not by the Canon, or any other Law, *quod nota.*

Their names.

These Mortuaries are in some places called course presents, or coarse presentees, as *Dr. Cowel* says, because where due, they used to pay them before the Coarse was buried, when it was brought to be buried.

Cro. Car. 237,

2 8.

Bishop of Chester his demand as Archdeacon of Chester.

The Bishop of *Chester* claimed by Custom upon the death of any Priest, dying within the Archdeaconsry of *Chester* for a Mortuary, his best Horse or Mare, Saddle, Bridle and Spurs, his best Gown, a Cloak, his upper Garment next it, his best Hat, his Tippet, his best Signet or Ring, and this Custom was denyed by the Plaintiff in a Prohibition, but what the Success was I have not heard, but the Mortuaries due to the Archdeacon of *Chester* are excepted: and the Bishop of *Chester* holds that Archdeaconsry, as I have been informed, in the nature of a *Commendam*, and executes it by a Deputy.

Office of Executor.

Lib. 6. §. 16.

Mr. Swinborn is of opinion, that these Mortuaries are to be paid out of the decedents part of the personal Estate where

where the Wife and Children are to have their reasonable part, the reason he gives is because Mortuaries are of the nature of Legacies. But I must confess I am not of his opinion, for I look upon it as a debt or duty to which the personal Estate is subject.

CHAP. XXV.

The Five and Twentieth Chapter shews, how Tithes are to be paid in London.

THE Livelihood of the Clergy in London, I mean the secular Clergy, consisted heretofore chiefly in voluntary offerings and Personal Tithes, which little differ from voluntary offerings. For though a great Doctor tells us that,

In precipuis festivitibus tenetur quis offerre, & cogi potest, maxime cum sit quasi generalis consuetudo ubique terrarum, &c. Hostiensis c. Omnis Christianus.

And if you ask him which are those Feasts at which the People are bound to offer, he tells you, *Dies dominicos, & dies festivos.* Idem de Faroc; Sect. In quibus, &c.

But

But there being no Canon or Law that precribes any certainty in the quantity, value, or things to be offered, I can give them no properer a name than voluntary or free will offerings. But no sooner was Popery abolished in this Nation, but these voluntary Offerings and personal Tithes soon came to little. And notwithstanding it was enacted by the Statute of 2.E.6. That all that by Law or Custom were bound to make their offerings should thenceforth pay them to the Parson, &c. yet that did not much amend the matter, so that the maintenance of the secular Clergy in London was brought to a very low ebb, there being no Tithes as hath been said, chargeable upon houses, unless by way of a *modus decimandi*, whereupon the Clergy of London in the 37th year of the Reign of King H.8. made their application to the Parliament, and obtained an Act of Parliament for the confirming a Decree made by the Archbishop of Canterbury and divers other great Lords of the Kingdom, to settle the matter, the effect whereof follows, which is printed amongst the other Acts of Parliament.

Stat. 37. H.8. c.
12.

The Decree.

1. That the Citizens of London from thenceforth for ever, should pay yearly without fraud or guile to their Parsons, &c. for the time being, for every ten shillings rent of all houses, shops, warehouses cellars and stables,

Stables within the said City of London, and the Liberties of the same 16 d. ob. and for every twenty s. rent, 2s. 9d. and so ascending for every ten shillings rent.

2. That if any dwelling houses, shops, &c. should be leased by fraud or covin, reserving less Rent than hath been accustomed; or shall by reason of Fine or by fraud or covin, make any Lease without reserving any Rent, then the Farmer or Tenant shall pay after the same Rate, the said house, &c. was last let for without Covin; but note, that if the house, &c. be let at as great a Rent, as the same was set at the time of the making of the said Statute, then no fraud can be averred, although a Fine or lūcome was given for the said Lease.

3. That if a House, &c. be leased, and no Rent at all reserved, then such house, &c. shall pay such rate as the same was let for at the time of the making of the said Statute; but where greater Rent is reserved, it is to pay according to the best improved value. ^{2 Inst. 659.}

But where Houses had been always held by the Owners, and, by consequence, no Rent paid, that is casus omissus in this Statute, and such Houses will be freed of payment of Tithes by this Law. ^{2 Inst. 660.}

But if it were a House, that yielded Rent at the time of the making of the Decree, and be now let without Rent, it shall pay Tithes according to the Rate it was set for

for at the making of the Decree, although no Fine at all were paid for such Lease.

5. The Tithes upon this Decree cannot be sued for in the Ecclesiastical Court, because the Act it self declares how they shall be recovered.

6. That if the Owners held the Houses themselves, then they shall pay Tithe after the rate the same were set for at the time of the Decree.

7. That if any person take any House, &c. by Lease, and he and his Executors, &c. live in part of it, and set out part, the principal Farmer or Taker, his Executors, &c. shall pay their Tithes for his and their parts after the rate aforesaid, and of such parts as is farmed out according to the rate it is set at. And in the same manner Tithes are to be paid, where one takes a Lease of several Houses, and lets out part, and holds any part himself.

8. That if any Farmer, or his Assigns shall farm all the Houses, &c. so farmed to one or divers Tenants, the Tenants shall pay Tithes according to the Rent reserved.

9. That if dwelling Houses shall be converted into Warehouses, or e converso, yet they shall pay Tithe according to the Rate aforesaid.

10. That if a Dye-house or Brew-house be let with the Implements, then a third penny of the Tithes after the rate aforesaid to be abated.

11. That

11. That where a Mansion-house with shops, stables, wharfs, with Crane, Timber-yard or Gardens belonging to the same, and occupied together shall afterwards be severed, or were severed within 8 years before the Decree, that then the Farmers of the shops, stables, &c. shall pay Tithes according to the Rate abovesaid.

12. That these Tithes shall be paid quarterly at Easter, Midsummer, Michaelmas and Christmas.

13. That any Householder, that holds a House of 10 s. Rent, or above shall be acquit of his Offerings; but his Wife, Children, and Servants shall pay 2 d. yearly for their four offering days, receiving at Easter.

14. That if any House of 10 s. Rent or above, shall be let by parcels under 10 s. Rent, then the Owner, if he live in any part of the house, or the chief Tenant, shall pay the Tithe after the rate as the same House was accustomedly letten before such Division, and the Sub-tenants, that hold less than 10 s. per annum, without fraud or covin shall pay 2 d. yearly for their Offerings.

15 That no Tithe shall be paid for any Gardens belonging to any Mansion-house, and which are held for pleasure; but if such Garden contain half an Acre of ground or more, and shall make any yearly profit by Sale, then the same to be paid for, according to the rate abovesaid,

16. This

16. This Act is not to extend to the Houses of Noblemen or Noblewomen whilst they are kept in their own hands, and not let for Rent, and which formerly paid no Tithe, so long as the same continue unletten, nor to the Halls of any Craft or Companies so long as the same are unletten, and in times past paid no Tithes.

17. That Sheds, Stables, Cellars, Timber-yards and Tenter-yards, which were never parcel of, or belonging to any dwelling House, and which have not been used to pay Tithes, shall be acquit of the payment of Tithes, as hath been accustomed.

18. But if by custom any lesser rate have been paid than after the rate of two shillings and nine pence in the pound, then the accustomed rate only to be paid.

19. The Lord Maior of the City of London, by the Advice of Council is Authorised by the said Act, to hear and determine all differences arising upon this Decree, and give Costs according to the intent thereof.

20. That if the Maior do not make an end of such differences within two Months after complaint; or if any Person find himself aggrieved by his Decree, then the Lord Chancellor within three Months after complaint to him made, shall make an end of the differences with costs, &c.

21. That

21. That if Rents fall by reason of decay or burning, to less than they were accustomedly letten, That then the Tithes during such Term, shall be paid according to the Rent reserved.

This is a short abstract of that great Decree which I have inserted here for the use of the Clergy of that City. I shall only add some other resolutions upon this Decree, and conclude this Chapter.

In a Case between Dr. Meadhouse and Dr. Taylor it was resolved, that Suits for Tithes upon this Decree should be before the Maior in Writing, and not by Parol.

Noy. 130.
Where Suits for Tithes in London shall be determined.

2. That a Reservation by a Lessor for life upon a Lease by him made for years, shall not bind him in Reversion to pay Tithes according to that rate.

3. That a Rent for half a year, and after for another half year is a yearly Rent with within this Decree.

It hath been resolved that Abbeylands within the City of London, and the Liberties thereof are not freed from the payment of Tithes within the Statute of 31 H. 8. because the Statute and Decree for the payment of Tithes within the City and Liberties of London was made after the Statute of 31 H. 8. and their Priviledges are not reserved.

Cro. El. 276.
More 912.

It hath been resolved that if the Rents be continued as they were at the time of the making of the Statute though upon new

vers. Scudamore.
5 Jac. C. B.
Cro. Jac. 6. 513.

new Fines that the Tithes shall be paid accordingly. But if upon new Fines less Rent be reserved; it shall pay Tithes as it did before.

And if no Rent be reserved, nor Fine paid; the Parson shall have his Tithes according to the Rent at the time of the Decree.

But if a House have always been held by the Owners, and no Rent paid, it shall pay no Tithes within the Decree.

The Decree was inrolled 5 *Marii* 38 H. 8. although the inrollment cannot be found.

And it was resolved that if the Major of *London* shall make any Decree against Law, a Prohibition lies; for the exposition of all Acts of Parliament belongs to the Judges of the Common Law.

And it hath been resolved that though a House in *London* stand void without any Tenant at all, That yet notwithstanding it shall answer Tithes to the Parson.

And it hath been resolved that if any Suit be brought in the Ecclesiastical Court or any other Court than is directed by the Act, a Prohibition lies.

Lastly, where the Decree says (where no Rent is reserved by reason of any fine or income paid before hand) that is put only for Example, for if no Rent be reserved for this, or any other cause or consideration, it is within the meaning of this Clause.

CH A P.

Dr. Burges:
parson St. Mag-
nes vers.
Symonds
Scaccar. M. 4.
Car. 1. per.
Henden.
2 Inst. 660.

C H A P. XXVI.

The Twenty Sixth Chapter shews, in what Courts the Right of Tithes is determinable, and how, and in what manner to be recovered, and in what Cases Prohibitions are usually granted, and how prosecuted and defended.

THAT Tithes were anciently determinable in the County and Hundred Courts, is asserted both by Sir Edward Coke and Mr. Selden: And the same appears by the Laws of King Ethelstan long before the conquest; and Mr. Selden is of opinion, that the Bishops consistory here in England was not settled till the time of William the Conqueror, who by his Charter commands, *ut nullus Episcopus vel Archidiaconus de legibus Episcopalibus amplius in Hundredo placita teneant, nec causam que ad regimen animarum pertinet ad iudicium secularium hominum adducant, sed quicunque secundum leges Episcopale de quacunque causa vel culpa interpellatus fuerit, ad locum, quem ad hoc Episcopus elegerit & nominaverit, veniat, i-*

2 Inst. 661.
490.
Seld. hist. de-
cim. 412.
Lamb. Saxo
Laws 45.

Seld. 414.

Seld. 414. &c.

Leg. H. I. c. II.
Lamb. 182.

bique de causa sua respondeat, & non secundum Hundret. sed secundum Canones & Leges Episcopales rectum Deo & Episcopo suo faciat. And closes thus, *Hoc etiam defendo, ut nullus Laicus homo de legibus, quæ ad Episcopum pertinent se intromittat;* yet notwithstanding, as Mr. Selden observes, the Jurisdiction of Tithes was not so settled in the Bishop and Ecclesiastical Courts, but there were Suits for Tithes as well in the Temporal as Ecclesiastical Courts, whereof he gives some Instances. And amongst the Laws of King H. I. I find this Clause, *Si quis rectam decimam supersteneat, vadat prepositus Regis & Episcopi & terræ domini cum presbytero, & ingratis auferant; & Ecclesiæ cui pertinebit, reddant, & nonam partem relinquunt ei qui decimam dare noluerit.*

But the Law hath been now long settled that the Ecclesiastical Courts have in some cases the power to determine the right of Tithes, and in all cases to hold plea for the subtraction and withholding of Tithes, and confirmed by several Acts of Parliament.

35 H. 6. 30.

38 H. 6. 22. per
Fortescue.

Where the Spiritual Court may
determine the
Right of Tithes.

To the first, if a dispute happen between two Parsons, to which of them the Tithes belong, whether to the one by parochial right, or the other as a portion belonging to his Rectory by prescription, and both Parsons claim by presentation under the same

same Title, so that the right of Patronage comes not in dispute, the right of these Tithes shall be determined in the Ecclesiastical Court, and no Prohibition or *Indicavit* shall hinder it, and this suit in the Ecclesiastical Court is called a spoliation.

And this Jurisdiction is so peculiar and annexed to the Spiritual Courts, That if the one Parson should bring an Action of Trespas at the Common Law against the other Parson, for the taking and carrying away Corn or other things set out for Tithe, the Defendant may by way of Plea shew, that the Goods in question were Tithes set forth and severed from the nine parts, and that he is parson of *Dale*, and that he and all his predecessors time out of mind have had these Tithes as a portion which belonged to his Church, and that the Plaintiff being Rector of the Parish where they grew, claims them as his Tithes, and demand Judgment, if the Kings Court will hold plea, by such plea the Kings Court shall be ousted of Jurisdiction, but if the dispute in such Action fall out in pleading to be about the bounds of the Parishes, then the Kings Court shall not be ousted of Jurisdiction.

* And so it is, if the question be between the Farmer, Bailly, or Servant of the one Parson, and the Farmer, Bailly, &c.

38 H. 6. 24.

5 H. 5. 4.

14 H. 4. 17. a.

b.

Where the temporal Courts

have no Jurisdiction of tithes

* 5. H. 6. 10.

50 E. 3. 20.

38 E. 3. 6.

39 E. 3. 23.

3 H. 5. 10.

1 H. 6. 5.

44 E. 3. 19.

20 H. 6. 17.

2 H. 4. 15.

31 H. 6. 11.

2 E. 4. 15.

The Parsons Counsellor: Part II.

of the other, or the other Parson himself; in such cases, though the dispute does appear to be concerning the right of Tithes between the Parsons, yet the Court shall not be ousted of the Jurisdiction because they are not both Clergymen.

But in all these cases where the right of Tithes is in dispute between one Parson and another, in whose names soever the Suit is in the Spiritual Court, I conceive no prohibition lies, if both Parsons come in by the same Title of Patronage, so that the right of Patronage came not in dispute.

40 E. 3. 28.
35 H. 6. 39.
Noy 147.
More 907.

And I take the Law to be the same where the question arises between the Parson who is Patron, and the Vicar, whether Tithes belong to the Parson or Vicar.

West. 2. c. 5.
Circumspecte
Agatis,
Articuli Cleri.
cap. 2.
*Where the Spi-
ritual Court.
cannot deter-
mine the right
of Tithes.*

But where the right of Tithes is controverted between two Clergymen which come into their Churches by several Patrons, there in that case the Spiritual Court hath not Jurisdiction to determine the right of the Tithes, if they amount to the fourth part of the yearly value of the Church; but the Title is to be determined by writ of right of Advowson of Tithes as shall be shewed more at large, when I shall come to shew in what cases the right of Tithes is determinable in the Kings Court. But in that

case

case if the Tithes in question do not amount to the fourth part of the value of the Church, the Ecclesiastical Court may determine the right in a Spoliation. F. N. B. 37 E.

But it should seem that if they claim both by one Patron, there though the whole Tithes come in debate, the Title shall be determined in the Spiritual Court by a Suit in the nature of a Spoliation.

But the Jurisdiction of the Ecclesiastical Courts to hold Plea for the subtraction and withholding of Tithes, as the same hath been very ancient, so it hath been confirmed by several Acts of Parliament, as I shall shew; the first of which is that of *circumspecte agatis* made in the Ninth year of E. 1. by which it is enacted, That, *Si Rector petat versus parochianos oblationes & decimas debitas & consuetas; vel si Rector petat versus Rectorem de decimis majoribus vel minoribus, dummodo non petatur quarta pars valoris Ecclesie; Item si Rector petat mortuarium in partibus ubi mortuarium dari consuevit; Item si praelatus alicujus Ecclesie vel advocatus petat a Rectore pensionem sibi debitam, omnes hujusmodi petitiones sunt faciende in Foro Ecclesiastico, &c.* and concludes, *In omnibus predictis casibus habet Judex Ecclesiasticus cognoscere, Regia prohibitionem non obstante.*

Spiritual Jurisdiction confirmed by several Acts of Parliament.

By the Statute de circumspecte Agatis.

*That it is an
Act of Parli-
ament.*

2 Inst. 487.
Seld. H. st. de-
cim. 424.

*And extends
to all England.*

2 Inst. 487.

*Observations in
the penning of
it.*

There hath been some question made whether this were an Act of Parliament or not, but it is proved by Sir *Edward Coke* by many unanswerable reasons to be an Act of Parliament, and so agreed by *Mr. Selden*, and almost all others.

Secondly, admitting it to be an Act of Parliament, it hath been doubted whether it extended further than to the Dioceses of *Norwich*, it seeming to be appropriated by the penning to that Diocese alone; but by the general opinion of the learned it extends to all other Dioceses, and *Norwich* is only put by way of example.

And the prudent penning of this Law by our Ancestors deserves the Readers observation, how careful they were to preserve their own rights, and avoid the incroachments of the Clergy, who were in those daies very powerful: for first, they would not give way to the Canons to destroy their Customs and Prescriptions allowed by the common Law, and therefore give the Spiritual Judge Jurisdiction of Tithes and Oblations (*debitis & consuetas*) only.

2. They would not expose their Rights of Patronage to the determination of the Spiritual Judge, and therefore this condition is annexed, *Dummodo non petatur quarta pars valoris Ecclesie.*

3 Lastly,

3. Lastly, they would not subject themselves to pay Mortuaries according to the Canon Law, but *ubi dare consuevit*; so that if any suit were sued for Tithes, Offerings, Mortuaries, not due as well by Custom as Common Law, a Prohibition lay, and doth lye at this day.

The second Statute concerning the Jurisdiction of the Spiritual Courts in case of Tithes, is the Statute of *Articuli Cleri*, but I shall pass it by here till I come to speak of the Writ of *Indicavit*.

The next Statute I meet with that 18 E. 3. ca. 7. concerns this matter, is the Statute of 18 E. 3. ca. 7. which I shall pass by also till I come to speak of the determination of the right of Tithes by *scire facias*.

There was another Statute made 1 R. 1 R. 2. ca. 13. 2. it is cap. 13. for the punishing of such as indicted those that sued in the Spiritual Courts for subtraction of Tithes, or compelled them to desist by Bonds or otherwise; but that Law being now become obsolete, and besides my purpose, I shall proceed to the Statute of 27 H. 8. 27 H. 8. c. 20. by which it is enacted,

That every Subject of England, Ireland, Wales, Callais, and the Marches of the same, should according to the Ecclesiastical Laws and Ordinances of the Church of England, and after the laudable Usages

and Customs of the Parishes or other places where he dwells or occupies, shall yield and pay his Tithes and Offerings, and other duties of holy Church: and that for subtraction of such Tithes, &c. may by due process of the Kings Ecclesiastical Laws convene the Person, &c. so offending, before his Ordinary or other competent Judge, &c. having Authority to hear and determine the right of Tithes, &c. And to compel the party offending to do and yield their duties in that behalf. And in case the Ordinary, &c. for any contempt, contumacy, disobedience, or other misdemeanour of the Party Defendant shall make information to any of the Kings most Honourable Council, or to the Justices of the Peace of the Shire where the offender dwells, to assist and aid the Ordinary, &c. and to order and reform any such Person, in any cause before rehearsed, that then he of the Kings Council, or such two Justices of the Peace, whereof one to be of the Quorum, to whom such information or request shall be made, shall have power to attach, or cause to be attached the Person, or, &c. against whom such information shall be made, and to commit the same Persons to Ward, there to remain without Bail or mainprize until he, &c. shall have found sufficient Surety to be bound by Recognizance or otherwise, before the Kings Councillor, or, &c. or any other like Councillors, or Justices, &c. to the use of the King, to give due obedience to the

Process

Process and Proceedings, Decrees and Sentence of the Ecclesiastical Court wherein such Suit, &c. shall depend or be. And further gives power to the said Counsellor, or to two Justices of the Peace, whereof one to be of the Quorum, to take, receive and Record such Recognizance and Bonds.

There is a Proviso in this Act, that it shall not extend to London.

And another Proviso that the party sued may have all legal Defences, Appeals and Prohibitions.

Observations upon this Law,

And it is to be observed that this Law extends to all sorts of Tithes, mixit and Personal, as well as predial.

Next he that will have the benefit of this Law, must sue for the single value, and not for the double value upon the Statute of 2 E. 6.

Thirdly, the Plaintiff in the Ecclesiastical Court may proceed upon this Act for contempt, contumacy, or misdemeanour, as well before as after Sentence.

Fourthly, The security upon this Act may as well be by Bond as Recognizance.

Lastly, observe the wary penning of this Act; they must pay their Tithes and other Church Duties, according to the Ecclesiastical Laws and laudable Customs and usages of the place, next, if it be demanded before whom suit upon this Statute shall be made, it is answered

red by the Statute it self, it must be before such Judge as hath Jurisdiction of the Cause, so that it creates or enlarges no Jurisdiction.

32 H. 8. ca. 7.

The next Act of Parliament concerning this matter is the Statute of 32 H. 8. by which it is enacted, that all and singular persons, &c. shall fully, truly and effectually divide, set out, yield or pay all and singular Tithes and Offerings, according to the lawful Customs and Usages of the Parishes and places where, &c. and in case any person, &c. to detain or withhold any of the said Tithes or Offerings, or any part or parcel thereof, that then the person Lay or, &c. shall and may convent the person or &c. before the Ordinary, &c. according to the Ecclesiastical Laws, &c. and so proceed to Sentence according to the Process and course of the Ecclesiastical Laws.

And that if any party appeal against the Judges Sentence, he shall then assess the Costs of his Suit therein before expended, and shall compel the Apellant to pay the said costs by the compulsory Process and Censures of the said Laws, taking security of the said party, to whom the said costs shall be paid, to repay the same, if the Appeal be adjudged against him.

And if any Person after sentence definitive given against him shall obstinately and wilfully refuse to pay their Tithes, or the sum adjudged, that then two Justices of the

Peace

Peace, whereof one shall be of the Quorum, shall, &c. upon Information, Certificate, or complaint to them made by writing, by the said Ecclesiastical Judge, &c. cause the party refusing to be attached and committed to the next Goal, there to remain till he, &c. have found sufficient sureties to be bound by Recognizance or otherwise before the same Justices to the use of the King to perform the said definitive sentence.

Provided that no person, or, &c. to be sued or otherwise compelled, to yield, give or pay any manner of Tithes for any Mannor, Lands, &c. which by the Laws or Statutes of this Realm are discharged, or not chargeable with, &c. Tithes.

Provided that this Act shall not extend, or be expounded to give any remedy, cause of Action, or Suit in the Courts Temporal against any person, &c. which shall refuse or deny to set out his or their Tithes, or which shall detain, withhold or refuse to pay his Tithes or Offerings, or any parcel thereof: but that in all such Cases the person or persons, being Ecclesiastical or Lay persons, having cause to demand or have the said Tithes or Offerings, or thereby wronged or grieved, shall take and have their remedy for their said Tithes and Offerings in every such Case in the Spiritual Courts, according to the Ordinance in the former part of the said Act mentioned, and not otherwise, any thing, &c.

1. It

1. It appears by the Preamble of this Law, that this Act was particularly designed for the relief of Impropriators, who before this Act were not capacitated to sue in the Spiritual Courts for the Subtraction of Tithes, and were hard put to it to find any other relief.

2. Where by the former Act the party for Contumacy, &c. might be compelled to give security before Sentence, in this case of the Lay Impropriators the Party cannot be compelled to give security till after definitive Sentence.

3. Upon this Law there must be two Sureties at least, upon the former one sufficed.

4. The security in this, as the former, may be by Bond or Recognizance.

5. Whosoever will have the benefit of this Act, must sue particularly upon this Law for the single value, and not for the double value upon the Statute of 2 E. 6.

6. This Law extends, as the former did, to all manner of Tithes and Offerings.

7. *London* is excepted out of this Act, as it was in the former.

8. This Law only extends to customary Tithes, and not for Tithes due by Canon and Ecclesiastical Laws.

9. This Act only extends to such as shall obstinately and wilfully refuse to perform

perform the Sentence of the Ecclesiastical Judge, and for no other contempt or neglect.

10. Lastly this Act restrains the Suit to the Ecclesiastical Court upon this Statute, otherwise an Action, as should seem, might have been brought at Common Law upon this Statute for not setting forth, &c. of their Tithes.

But divers defects appearing in this Law, especially to the Lay-Improprators, they obtained a more effectual Law for their purpose in 2 E. 6. by which it is enacted.

That if any Person carry away his Corn or Hay, or other predial Tithes before the Tithe thereof be set forth, or willingly withdraw his Tithes of the same, &c. that then upon due proof thereof made before the Spiritual Judge, or any other Judge to whom heretofore he might have made complaint, the Party so carrying away, withdrawing, letting or stopping, shall pay double the value of the Tenth or Tithe so taken, lost withdrawn or carried away, over and besides the costs, charges and expence of the Suit in the same, the same to be recovered before the Ecclesiastical Judge according to the Ecclesiastical Laws.

Stat. 2 E. 6.
cap. 13.

There is a Proviso in this Act, that gives occasion of many Prohibitions to this effect:

That no person shall be sued, or otherwise compelled to yield, give or pay any manner of Tithes for any Mannors, Lands, Tenements

Tenements or Hereditaments, which by the Laws and Statutes of this Realm; or by any Priviledge or Prescription are not chargeable with the payment of such Tithes, or that be discharged by any Composition real.

*Extends only to
Predial Tithes.*

This Paragraph of this Statute as to the double value, extends only to predial Tithes, as Corn, Hay, Wood, Flax, Hemp, Fruit, &c. but for mixt and personal Tithes, there is a provision after in this Act.

Sole Jurisdiction to the Spiritual Courts.

There is also another Proviso in this Statute as in the former, which restrains all Suits for Subtraction of Tithes to be sued in the Ecclesiastical Court, and that it shall not be lawful to sue any with-holder of Tithes, obventions, &c. in any other Court; and that if the Ecclesiastical Judge shall give Sentence, no Prohibition or Appeal depending, and the party condemned do not obey the Sentence, that then such Judges may excommunicate the party, and if he wilfully stand excommunicated by the space of forty days next after publication thereof in the Parish Church of the place or Parish, where the party excommunicated is dwelling or most abiding, then the Judge Ecclesiastical may certify the King in Chancery, and require Process of Excommunicato capiendo.

Excommunicato capiendo given

This Clause extends to all manner of Tithes, Offerings, &c. but this gives no double damages for them, as the former Cause doth for Predial Tithes.

There

There is another Clause in this Act, that gives ground likewise for many Prohibitions which is to this effect,

That the aforesaid Clause shall not extend to give any Judge Ecclesiastical Jurisdiction to hold plea of any matter, cause or thing repugnant to, or against the effect, intent or meaning of the Stat. of Westminster the second cap. 5. the Stat. of Articuli Cleri, circumspēcte Agatis, Sylvæ cœdū, the Treatise de Regia Prohibitione Stat. 1 E. 3. cap. 10. or any of them, or to hold Plea in any matter, wherein the Kings Court ought to have Jurisdiction, anything therein, &c.

Note, that by these three Statutes before mentioned the Jurisdiction of Tithes is confirmed and restrained to the Ecclesiastical Courts.

That by the Statute of 27 H. 8. Process for contempt is given before Sentence. *Observations upon all the Statutes.*

By that of 32 H. 8. Process for contempt is given after Sentence definitive: but observe the different penning.

And by this last Statute a Writ of *excommunicato capiēdo* is given, if the party continue obstinate by the space of forty days, after an Excommunication published against him: so that a man would think here were as good remedies provided for the Recovery of Tithes in the Ecclesiastical Court as could be imagined

gined; but the interruptions that are frequently given by Prohibitions, as shall be shewed hereafter in due place, very much frustrate the effect of the proceedings in those Courts.

2 Inst. 490.

Nov 81.

Herley 27. 133.

Latch. 210.

And note, that a *modus decimandi* is properly to be sued for in the Ecclesiastical Courts: but if the Prescription be denied, it shall be tried in a Prohibition.

And so having said so much concerning the Ecclesiastical Jurisdiction for the determining the right of Tithes, and relief against subtraction of Tithes, I shall in the next place shew, in what Courts, in what Cases, and in what manner they are determinable in the Temporal Courts.

Selden 422.

In what Cases

the Temporal

Courts have,

and may deter-

mine the Right

of Tithes.

Mr. *Selden* in his *Historie of Tithes* reckons up five manner of ways, whereby the right of Tithes may be determined in the Temporal Courts. 1. In Prohibitions, whereby the Spiritual Courts are forbidden to hold Plea, where matters happen which are only triable at the Kings Court, or where those Courts proceed against any Statute or the Common Law, &c. 2. By Writs of Right of Adowson; whereunto may be annexed the Writ of *Indicavit*. 3. By *Scire facias*. 4. By Process mandatory to command the payment of Tithes. 5. By Suits and Actions upon the before mentioned Statute of 27 H. 8. 32 H. 8. and of 2 E. 6. to which

which may be added the Trials at Common Law by Actions of Trespafs, Affize, &c. And of these in order.

And first of Prohibitions, which are frequently obtained out of the Courts at Westminster, Courts of great Sessions in Wales, and the County Palatines, &c. upon these grounds following.

First upon a *modus decimandi*, where the Defendant in the Spiritual Court suggests, that he and all those whose Estate he hath in the Lands, &c. in which &c. have time out of mind paid so much yearly in money, or given some other recompence in satisfaction of all the Tithes arising upon the Lands, or of all the Tithe Hay or Corn, &c. this manner of Tithing being by Prescription, which is only and properly triable at Common Law, if pleaded in the Spiritual Court or not pleaded, or allowed or not allowed as a good Plea, there is a ground of a Prohibition; and what Prescriptions and *modus decimandi* are in this case approved of by the common Law, I must refer the Reader to the proper Chapter before.

2. If the Bounds of a Parish come in dispute, whether the place where the Tithes arise be in this or that Parish, this is a matter triable by Jury, and therefore upon a suggestion of this matter a Prohibition will be granted.

C c

3. If

In what cases Prohibitions use to be granted.

Hob. 286.
42.
247.
2 Inst. 6. 10.
Co. entr. 459.
d. 450. b.
Co. 2. 44.
Dyer 74. p. 49.
Modus decimandi.

Bounds of the Parish.
Noy 147.
Co. 7. 44. b.
Roll. 2. 291. l.
1, &c.
5 H. 5. 10.
Cro. El. 223.

*Monasterylands
discharged of
Tithes.*

Co. Ent. 450.

C. 453. d. Por-
ter vers. Ro-
chester. M. 6.

Jac. C. B.

Roll. 2. 307.

v. 13.

*Suits for things
not Tithable.*

Roll. 2. 286. f. 4.

*For matters de-
terminable at
Common Law.*

38 E. 3. 5.

Cro. El. 228.

642.

Roll. 2. 302. q.

19. 23, 24. v. 16.

*For irregular
proceeding of
the Spiritual
Courts.*

3. If Lands be pretended to be discharged of Tithes by the Statute of 31 H. 8. or any other Statute, a Prohibition lies, because it properly belongs to the Judges of the common Law to expound all Statutes, &c. so if the suggestion be grounded upon the *Stat.* of 2 E. 6. for barren grounds, &c.

4. If one sues in the spiritual courts for the Tithes of things not Tithable by the common Law, for which see *cap.* 12. before, or for the Tithes of great Woods above twenty years growth, it is a ground for a Prohibition.

5. If a Suit be brought in the Spiritual Court for the taking and carrying away of Tithes, after the Tithes are set forth and divided from the nine parts by the Parishioner, unless the Suit be between two Ecclesiastical persons in their proper rights, a Prohibition lies, because tis matter triable at common Law.

6. If the Spiritual Court will not admit a Legal defence, as a Release, an accord with satisfaction, an award, &c. or if the Spiritual Judge refuse to admit the Defendant to traverse the Plaintiffs Title, that he is not Parson Vicar, &c. a prohibition will be granted, but if the Defendant in the spiritual Court alledge such matter against the Plaintiff there, which is properly triable in that court,

as Simony, &c. in such case no prohibition will be granted.

7. If the spiritual Court shall disallow the proof of the setting forth of the Tithes by one witness, Prohibitions have been granted. *Contra Co. 12, 65. Ideo quere.*

*Cro. El. 666.
Roll. 2, 300. q.
6. 8, 9. 301. q.
14, 15.
More 909.
Hecley 87.
Disallow proof
by one witness.*

There are many more cases, wherein Prohibitions have been granted, but these are the most frequent, and may serve for a taste. And indeed prohibitions are granted in all cases, where they exceed their Jurisdiction.

By the Statute of 2 E. 6. It is enacted, that no Prohibition shall be granted in matters of Tithes in any of the Kings Courts, unless the party that requires the same bring and deliver to some of the Court, where he prays such prohibition, a true copy of the Libel subscribed by the hand of the party, and the suggestion underwritten, and that if he do not prove that suggestion by two honest substantial witnesses in the same Court within six Months after the Prohibition granted and awarded, then the Party delayed shall have a consultation without delay, and double costs to be assessed by the Court where the consultation is so granted, to be recovered in an action of debt, &c. wherein no Effoin, &c. shall be allowed.

*2 E. 6. c. 13.
must produce
a Copy of the
Libel.*

*Must prove the
Suggestion
within six
Months.*

This clause of this Statute seems to give the Parson, Vicar, &c. a double remedy where the suggestion is not proved.

*Observations.
upon this
clause.*

Hoskins verf.
Stroade.

T. 9. Car. ro.

9th B. R.

Cockeram.

verf. Davyes.

Hill. 22. Jac.

Pop. 159.

Jones 131.

Cro. Car. 308.

2 Inst. 662.

2 Inst. 661.

Cobbe. verf.

Hunt. 5. Jac. B.

R.

Noy. 28.

Noy. 30. 44.

ved within six months, that is a consultation, and secondly, double costs. But in both these they are in some measure frustrated in their expectations: for as to the first, after such consultation a new prohibition may be obtained; and besides, there are several cases wherein the party cannot, or needs not prove his suggestion, notwithstanding this Statute, as where the suggestion is in the negative, which regularly cannot be proved: secondly, if the suggestion be grounded upon any matter of Law, as in case the Suit be for things not Tithable, great Wood, things *feræ naturæ* &c. this appearing in the libel; a prohibition lies, and there needs no proof of the suggestion.

If a suggestion contain two matters, and the one ought to be proved within 6 months, and the other here, though the party fail in proving that part that ought within this Law to have been proved, yet no consultation shall in this case be granted.

A sleight proof will serve in this case as to say they have known it so, or that common fame is so.

And if the suggestion be proved before a Judge within the six months though not recorded till after, it suffices.

To the second here is double costs to be awarded for want of proving the suggestion, and no execution given, but an Action of debt to recover it; which is but a bad remedy in this case, when the party shall only recover the costs, and have no costs allowed him in the second Suit.

If a man have a prohibition, and do not prove the suggestion within the six months, and the defendant takes issue upon it which is found against him, in this case the Defendant shall have no costs.

So upon the whole matter here's a plausible cause in an Act of Parliament, and little benefit by it.

It is to be observed that some prohibitions are in themselves peremptory, as where there is a suit in the Spiritual Court for things not Tithable, and appearing so in the Libel, in which cases a consultation shall never be granted: and so it is, if the suit be for carrying away Tithes after they are set forth, unless it be between Clergy men in their own rights: and so it is where the matter is determinable at common Law, and the same appearing in the Libel.

In what case Prohibitions are Peremptory in themselves.

But where a *modus decimandi*, a custom of not Tithing, a privilege within the Statute of 31 H. 8. for Abbey lands, and in such other cases, where the suggestion is grounded

where ex post facto.

grounded upon matter of fact, which is doubtful to the Court, those prohibitions are not peremptory till the matter of fact be tried and found true by Verdict.

More 919.

And note that the Reversioner may have a prohibition upon a Suit against his Tenant.

Hetley 147.

But it is a question whether two that are sued severally in the Spiritual Court may upon the same *modus* joine in a prohibition.

How to prosecute and defend Prohibitions.

The manner of proceeding in the obtaining, prosecuting and defending of prohibitions is in this manner.

The party that is sued in the spiritual Court, and desires a prohibition, moves the Court, and for the most part makes his suggestion *one sensu* at Bar: if the suggestion be such upon which a prohibition cannot be denied, the Court usually gives rule, that the party shall at a certain day come to shew cause why a prohibition should not be granted, and that in the interim proceedings in the spiritual Court should be stayed: upon serving this rule in due time, and oath made of it, if the Plaintiff in the spiritual Court do not appear at the day, and shew good cause to the contrary, the prohibition is awarded, and the rule made peremptory; but if the Court be doubtful, whether

whether the matter be sufficient to ground a prohibition or no, then, or at the Prayer of the Defendant the Court will order the Plaintiff to draw up his suggestion into form, and then the Court will consider of the matter, or the Defendant may demur to it and the matter argued by learned Counsel, and then the Court as they see cause, will either award the prohibition, or discharge the rule. But if the matter suggested be a good ground for a prohibition, but is in it self false or doubtful, the Defendant in the prohibition may demand a declaration of the Plaintiffs Attorney which is grounded upon a supposed attachment for not obeying the prohibition; to which the Defendant may plead as Counsel shall advise him, and Traverse, and put in issue the matter of the said suggestion or such other matter as Counsel shall advise, which is to be tryed by a Jury of the Countrey; if it pass with the plaintiff, then is the prohibition become peremptory; but if the Verdict pass for the Defendant regularly a consultation is awarded, that is, a Writ directed to the Judge of the Spiritual Court; authorising him to proceed notwithstanding the prohibition.

Star. 50 E. 3.

cap. 4.

Where a Prohibition may be had after Consultation.

Jones 231.

Cro. Car. 208.

Poph. 159, &c.

More 917.

Co. 5. 68. a.

Co. 12. Rep.

44.

Consultations
sub modo.

Sommers verf.

Sir Ric. Bulke-

ley. T. 32. El.

B. R. Poph. 58.

H. b. 179.

Now by a Statute made in the 50 E. 3. it is enacted, That where a consultation is once duly granted upon a prohibition made to the Judge of Holy Church, that the same Judge may proceed in the Cause by virtue of the same consultation notwithstanding any other prohibition thereupon to be delivered; provided always that the matter in the Libel of the said Cause be not ingrossed, enlarged, or otherwise changed.

But this Statute has been several times held to extend to such Causes only where consultations are judicially granted upon examination of the Cause, and not where they pass of course, as for want of proof of a suggestion, or upon Non-suit for want of prosecution, or where the first was granted for want of a Copy of the Libel, or such like.

Sometimes the Court grants a consultation *sub modo*, as where the matter of the Libel is in the disjunctive, and as to one part the Court has Jurisdiction, and to the other not, there the Court may grant a consultation as to that part that the Spiritual Court has Jurisdiction of, and let the prohibition stand as to the other.

Or a consultation may be granted, so that the Spiritual Court allow such plea, of such proof.

Note

Note that the six Months for the proof of the suggestion is according to the Kalendar, and not twenty eight days to the Month.

How the six Months to prove a Suggestion is to be accounted.
Co. 5. 68. a. .

And note in the cases before put the prohibition shall be general, and the consultation special, *quoad*, &c.

And it is taken for a Rule in Sir Henry Hobarts reports, that if a prohibition be faulty, yet the Defendant shall never have a consultation, if it appear to the Court that the suit in the Ecclesiastical Court was not well grounded.

Where no Consultation shall be granted upon a Verdict for the Defendant.
Hob. 300. .
Dyer 171. p.
5. 6.

And therefore where one sued for the Tithe Corn of sixty Acres of Land, and the Defendant suggested, it was barren Ground, and paid no Tithe, and pray'd and had a prohibition, and the Jury found that thirty Acres of it were so, and that the other thirty were barren, but had paid Tithe, Wool, and Lamb, and a consultation denied because it appeared the Plaintiff had no cause to sue for Tithe Corn.

So if one lay a *modus* for the whole town and proves it for himself only, no consultation shall be granted.

Noy 28.

So in a prohibition it was suggested, that the Parson had twenty Acres of Land, and ten Acres of Wood in discharge of all Tithes, and the proof was that he had twenty Acres of Land only, and a consultation

More 911.
Austen vers.
Pigot Cro.
El. 736.

sultation denied, because it appeared he had no cause of suit.

Prohibition after Sentence.

Hob. 97.

Noy. 70.

Winch. 8.

Cro. El. 595.

Hob. 67.

After consultation.

Hob. 286.

Hughes 245.

Hill 11. Jac.

C. B. Baldum

vers. Geery.

The virtue and vices of Prohibitions.

Regularly a prohibition ought, not to be granted after Sentence, unless it appear the sentence were obtained in the vacation, or by surprise, so that the party had not time to pray it sooner, or upon matter arising after the sentence, and the granting or not granting rests much in the discretion of the Court.

And so sometimes upon new matter arising after a consultation a prohibition may be granted, notwithstanding the aforesaid Statute of 50 E. 3. as where the Spiritual Court after consultation proceeds to try matter determinable only at Law, or if after a consultation the Spiritual Court will make an unjust decree as to award treble damages: and so in all cases if the Spiritual Judge will proceed illegally, and against the Common Law, after consultation a new prohibition may thereupon be obtained, but not upon any matter alledged in the Libel.

Prohibitions of themselves are excellent things, where they are used upon just, legal, and true grounds; and have often avoided the usurpations of the Popes and Spiritual Courts: but by the Corruption of these latter times they are grown very grievous to the Clergy, being too oft granted upon feigned and untrue sug-

gestions

suggestions, which it is impossible the Judges should foresee without the Spirit of Prophecy. And I think I may presume to say that where one was granted before Queen *Elizabeths* time, there have been a hundred granted in this last Age; and they are a very great delay and charge to the Clergy; and it were well, in my poor Judgment, if the Reverend Judges would think of some way to restrain them, or to make them pay well for their delay by making the Plaintiff enter into recognizance to pay such costs, as the Court out of which they issue, should award, in case they should not prove their suggestion in convenient time; or some such other course as they in their great wisdom shall think just and meet.

And so having done with the first manner of determining the right of Tithes at the Common Law, I shall proceed to the second, which is by Writ of Right of advowson, to which likewise belongs the Writ of *Indicavit*, which in it self is no other but a meer prohibition to the Ecclesiastical Judge, and first of the *Indicavit*.

There have been some opinions that the Writ of *Indicavit* is grounded upon the Statute of *Circumspecte Agatur* and *Articuli Cleri cap. 2.* But it is very clear this Writ lay at Common Law; and it appears in our Books that it was the opinion

*Indicavit at
Common Law.*

nion of some learned Judges that it lay in all cases where the right of Patronage might come in dispute, and of this opinion Sir Edward Coke seems to be.

38 H.6.20.a.
per Moile.
4 E.3. 27.b.
per Markham.
2 Inst. 364.
*Lay for any
Tithes.*
Brañon l.5.
c.4. 402.b.

For a sixth part

*Articuli Cleri
c. 2.*

2 Inst. 491.
*where the In-
dicavit lies.*

And Brañon a Learned Judge who wrote in the time H. 3. hath the very Writ in his Book, which was long before the Statutes abovementioned; and he saith that this Writ lies *si contentio fuerit inter Rectores de aliquibus decimis; quæ estimari possunt usque ad quartam, quintam vel sextam partem advocations.* Et ultra quam partem non extenditur prohibitio, prout sibi videtur.

But whatsoever the Common Law was, it is now settled by the Statute of *Circumspecte Agatis*, and *Articuli Cleri cap. 2.* That unless at least the Tithes in demand be of the fourth part of the value of the Church, this Writ lieth not: The Statute of *Articuli Cleri cap. 2.* is, *si sit contentio de jure decimarum originem habens de jure Patronatus, & earundem decimarum quantitas ascendat ad quartam partem honorum Ecclesie, locum habeat Regia prohibitio*, that is to say a Writ of *Indicavit*.

And this Writ lies as hath been said where one Parson demands Tithes against another Parson to the fourth part of the value of the Church or more, which comes into their Churches by several Patrons,

trons, for if the Incumbents come in both by one Patron the right of the Advowson cannot come in question, and by consequence this Writ lies not.

Suppose there be a Parson with a Vicarage indowed, whereof the Parson is Patron; and a Suit be for Tithes belonging to the Parson, to the value of a fourth part of the Parsonage, but not to the fourth part of the Parsonage and Vicarage: it should seem in this case though the Vicarage were derived out of the Parsonage, and may again be reunited to that, nevertheless by reason of the several Patrons an *Indicavit* will lye in this Case.

And it is to be observed that this writ doth not lye before Libel, nor after definitive sentence, for the party that prays this Writ must shew a Copy of the Libel in the Court of Chancery before he can have it.

F. N. B. 45. b. c.
12 E. 4. 13.
when.

And though the Law be restrained at this day to a fourth part of the value of the Church, where before it was at large. Yet the form of the Writ remains, and if the thing in demand be under the fourth part of the value, it must be shewed in pleading by the other side.

2 Inst. 36.
The form of the Writ not altered by the Statutes.

And this Writ lies as well for Offerings, as for Tithes: when such Writ is sued and served, and the proceeding in the Spiritual Court stopt, then the Plaintiff

F. N. B. 45. b.
Lies of Offerings.

Westm. 2. c. 5:

By whom.
F. N. B. 45. b.
But where the
same Person is
Patron and
Incumbent.
su. solem.
12 E. 4. 13. b.

F. N. B. 30. b.
The relief of Te-
nant in tail,
Purveyances,
&c.
2 Inst. 364.

tiff there is to sue his Writ of Right of Advowson of such a portion of Tithes as the case requires, and this is given by the Statute of *West. 2. cap. 5.* in these words, *Et cum per breve de Indicavit impeditur Rector alicujus Ecclesie ad petendas decimas in vicina parochia, habeat patronus Rectori sic impedito breve ad petendam advocacionem decimarum petitarum*: but this must be intended where the Patron has the Fee-simple of the Advowson. And the *Indicavit* is to be brought in the name of the Patron and his Clerk against the other Incumbent, that sues in the Ecclesiastical Court and his Patron; but the Writ of Right of Advowson is to be sued by the one Patron against the other, and the Patron demandant shall alledge explees taken by his Incumbent of great and small Tithes.

But if the Patron against whom the *Indicavit* is sued, be but Tenant in Tail, Tenant for Life or Years, then he cannot maintain a Writ of Right, but must demand and appear to a Declaration upon an attachment, and plead his Title, which must be proceeded in, as in other Prohibitions; and when the Title of the Patronage is determined at Common Law, then the cause must be remitted to the Ecclesiastical Court, where Sentence must be given according as the Law has deter-

mined

mined the Right, and this appears by the Form of the *Indicavit*, which is special, *Vobis precipimus ne placitum illud tenentis, donec discussum fuerit in Curia nostra ad quem illorum pertineat ejusdem Ecclesie advocatio.*

The Proceeding remitted.

Regist. 36. a.
35. b.

And there is a note in the Register, that this Writ lyes of a Vicarage, Prebend, & *aliis similibus* as well as of a Rectory: and the Form of the Writ is thus, *Præcipe A. quod reddat B. advocatorem decimarum quarta partis vel medietatis Ecclesie, &c.*

F. N. B. 30. c

But these Writs as well as other real Actions, are grown obsolete and seldom put in practice, and therefore thus much shall suffice of the nature and proceeding in them.

The third manner of proceeding for the determining the Right of Tithes at Common Law was by *Scire facias*, which was grounded either upon Letters Patents, Fines, or other Judicial Records, of which Mr. *Selden* instances several Prefidents; but this manner of Trial being taken away by the Statute of 18 E. 3. c. 7. I shall say no more of it.

Scire facias.
18 E. 3. c. 7.

The fourth sort of determining the Right of Tithes at Common Law, mentioned by Mr. *Selden*, is Writs Mandatory, commanding the payment thereof, whereof he gives some few Instances, but these having never been frequent, and for long

Seldens Hist.
decim. 439.
&c.
Co. Inst. 2.
640.
2 Inst. 640.
&c.
Writs Mandatory.

Selden 444.

c.

long time discontinued and grown out of use, I will not trouble the Reader with them, but refer the curious Reader to Mr. *Seldens* History of Tithes, and proceed to the fifth manner of determining the Right of Tithes at the Common Law, which is grounded upon the late Statutes.

For the Statute of 27 H. 8. there hath been sufficient said already; for that of 32 H. 8. that concerns the Temporal Jurisdiction, I shall leave it till the last, and proceed to shew what Authority is given to the Temporal Courts by the Statute of 2 E. 6. ca. 13. being the first Law that ever gave the Temporal Courts Jurisdiction for the Parson against the Parishioners for subtraction of Tithes, in which there is a Clause to this Effect.

2 E. 6. c. 13.

Tieble value.

And it is enacted by that Statute after it has confirmed the former Statutes of 27 H. 8. c. 20. and 32 H. 8. c. 7. *That every of the Kings Subjects should from thenceforth truly and justly without fraud or guile set out, yeild and pay all manner of their predial Tithes in their proper kinds, as they arise and happen in such manner and form as hath been of Right yeilded and paid within forty years next before, &c. or of Right or Custom ought to have been paid, and that no person thence forth should take or carry away such or like Tithes, which*

which had been yielded or paid within the said forty years, or of right ought to have been paid in the place or places Tithable of the same, before he hath justly divided or set forth for the Tithes thereof, the tenth part of the same, or otherwise agreed for the same Tithes with the Parson &c. under the pain of the forfeiture of the treble value of the Tithes so taken and carried away.

This Clause being compared with the former Clause, almost penned in the same words for the double value, would make a man at a stand what the meaning of the Parliament was, and it was forty years (when almost all that were at the making of this Act were dead) before it was found out, that an Action of Debt lay upon this Clause at Common Law for the treble damages: To wit *Pasch. 29 Eliz.* In the Exchequer in an Information by the Queens Attorney against one *Wood* for the treble value, as forfeited to the Queen. In which Case it was resolved, that an Action of Debt lay at the Common Law for the treble damage, for not setting forth of Tithes; for wheresoever an Act of Parliament gives a forfeiture against him, that doth dispossess, &c. the Owner of his property, as here he doth of his Tithes, there the forfeiture is given to the Party grieved or dispossessed. Since which resolution Actions of Debt have been frequently

2 Inst. 650.

D d brought

brought in all the Courts of *Westminster* by Parsons, Vicars, Proprietors, Owners and Farmers of Tithes, as well Lay as Spiritual upon this Statute, but being so long before it was found out, that an Action lay at Common Law upon this Statute, the Plaintiffs in the recital of the Statute alledged it to be made the fourth of *February. 2 E. 6.* whereas in truth the Parliament begun the 1st of *E. 6.* and was held by Prorogation the fourth of *February. 2 E. 6.* And this being discovered in an Action between *Oliver and Colier. P. 6 Jac. B. R.* brought upon this Statute, wherein the Statute was misrecited as aforesaid, and exception taken to it in arrest of Judgment, the Court upon good advisement over-ruled the exception by reason of the multitude of Presidents, and affirmed the Rule, that *multitudo errantium parit errori patrocinium.*

1 Brownlow.
100.

Yelver. 126.
Dyer 171. p. 6.
Stile. 122.

Now considering that this is become a very frequent Action in use, I conceive it will not be improper to the present occasion to communicate to the Reader what I have observed and learned in this kind of Actions, not only concerning the Forms of Declarations, Pleadings, Verdicts and Judgments, but likewise what evidence is necessary upon the general Issues of *non culpa.* and *nil debet.* for the Plaintiff and Defendant: And in the first

first Case consider in what Cases, and by whom, and against whom this Action may be brought.

If two be Joynt Tenants, and they enter and occupy joyntly, the Action must be brought against them jointly, but if one only enter and occupy, the Action must be brought against him, that only occupies alone.

Hutton 121.
122.
By whom, and
against whom,
Actions lie in
this Statute.

But if there be two Tenants in Common, and one of them sets out his Tithe, and the other carries it all away, there the Action shall be brought against him, that carries it all away alone.

If the Parson have two parts of the Tithe and the Vicar a third part, and one man farmes all, he may sue for all in one Action.

Noy 3.

If the Husband and Wife in the right of the Wife be intitled to Tithes, they shall joyn in this Action, because the damage is to survive: but a Parson and a Vicar cannot joyn, but if they joyn in a Lease to a third person, their Farmer may sue for all in one Action; but in the first Case, I see no reason but that the Husband may bring the Action alone, and so I have known it often done.

Noy 136.
1 Brown 86.
Yelv. 63.
Cro Jac. 68.
More 912.

In an Action brought upon this Statute, the Severance was alledged before the sowing, and exception taken after Verdict; but the Exception was

The Form of the
Declaration.
Beller verf.
Henworth P.
1657. B. R.

disallowed, because the shewing of the sowing was superfluous, and so aided by the Verdict.

Cro. Car. 324. The taking was alledged after the Plaintiffs term was ended, and yet held good.

More. 911. M. 40, and 41 Eliz. A Judgment was arrested, because the Suit was brought ad *respondendum tam Domino Regi quam Parti*; but this Case I very much doubt, for being against a Statute Law it is a contempt finable, though the Plaintiff have the forfeiture, as upon the Statute of Heu and Cry, &c. and I take the Case *inter Lavered and Owen* M. 4 Jac. C. B. for the better Law, where it was held good.

Hetley 121.

Cro. El. 170. Upon an Action brought by two upon this Statute, who made their Title by a Lease from a Patentee of the King, and exception was taken, because they did not shew the Patent, but disallowed. 1. Because the Letters Patents did not belong to the Plaintiffs. 2. Because the Plaintiffs did not demand the Tithes themselves, but damages for a tort; another Exception was taken to the Declaration, because the Plaintiff alledged the Defendant did not agree with them, and did not say, or either of them, but held good by Intendment.

And

And it hath been adjudged, that in this Action, the Plaintiff needs not to shew his Title especially, but it is enough for him to alledge that he is Proprietor, Farmer or Rector, generally without shewing how.

2 Bulst. 65.
228. 183.
1 Brown. 86.
Nry 3.
Yelv. 67. Cro.
Jac. 68. 361.

And it hath been held good, though the Plaintiff in his Declaration do not express the quantities or loads of the Corn or Hay carried away.

2 Brown. 70.
71.

And so it is, though you do not express in your Declaration, the kinds of the Grain carried away.

2 Inst. 650.

Where a Man alledged, that he was Farmer of all the Tithe-Corn arising, &c. upon sixty Acres of Land in D. and did not alledge which they were in certain, and yet allowed for good. 2. The Plaintiff alledged the Defendants Occu-
piers, but did not say, whether joynly or in common and yet held good. 3. The Plaintiff had alledged no time of the carrying away, but having alledged the time of the severance, and the carrying away, coming in with a Conjunction Copulative it was held well enough.

Cock- versus
Smith H. 7.
Car. 1. ro. 587.
B. R. per
Latch.

In an Action brought upon this Statute, the Plaintiff averred in his Declaration, that he was *subditus dicti Domini Regis*, having recited the Statute, and it was held naught, because it must necessarily be intended E. 6. and not of the present King.

Cro. Jac. 324.
2 Bulst. 114.

*Pleas in this
Action.*
Purser versus
Rochester.
Hill. 2. J. B.R.

In an Action upon this Statute the Defendant pleaded a Recovery in the Ecclesiastical Court; but it was held no good Plea at Common Law, but I conceive it would be a good evidence upon *nil debet* pleaded, otherwise the Parson were in an ill Condition.

Wortley vers.
Empringham.
P. 42 El. B.R.
Hob. 218.
Cro. El. 766.
Cro. Jac. 361.
More 914.

In this Action *non culpa*, and *nil debet* have been both held good issues, but it is no good Plea to plead, that the Plaintiff sowed the Corn, and sold it to the Defendant, because this matter will not excuse the payment of Tithes.

Now having brought the cause to issue upon *nil debet* or *non culpa*, we will shew in the next place what will be good and material evidence, as well for the Plaintiff as Defendant.

*What Evidence
is necessary in
this Action. ex
parte quer.*

First, if the Plaintiff be a Parson, Vicar or other Ecclesiastick, and have not been some considerable time in possession of his Living, in which I have not observed any constant rule amongst the Judges in their practice, but ten years quiet possession for the most part is allowed by the Judges for an evidence of the Plaintiffs Title, unless some material objection be made against it to draw it into question, but if the Plaintiff have been but for some short time in possession, or the possession litigious, then the Judges usually put the Plaintiff to prove his institution and induction, and now he must prove

prove that he was in Episcopal Orders at the time of his Institution, otherwise his institution is void by the late Act of Uniformity; he must produce a Certificate under the Hand and Seal of the Bishop, &c. that instituted him, that he subscribed the Declaration mentioned in the Act of Uniformity, and must prove he subscribed the same in the presence of the Bishop, or, &c. and he must prove that within two months after he was inducted, upon some Sunday or Lords day during Divine Service, he read the thirty nine Articles of Religion in the Parish Church into which he was inducted, and that he did declare his unfeigned assent and consent to all things therein contained, and he must likewise prove that within two months after actual possession of his Living he read Morning and Evening Prayer in his Church upon some Lords day, and openly and publickly before the Congregation declared his assent and consent to the use of all things therein contained and prescribed in these words, *I A. B. do here declare my unfeigned assent and consent, to all and every thing contained and prescribed in and by the Book Intituled the Book of Common Prayer and Administration of the Sacraments, and other Rights and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David,*

vid, pointed as they are to be sung or said in Churches, and the form and manner of making, or Ordaining, and Consecrating Bishops, Priests and Deacons.

The Parson, Vicar, &c. having thus made himself a Title, must proceed to prove the taking and carrying away the Corn, Hay, &c. and the value; and if need be that the Land lies within the Parish, &c. but this the Judges put them to prove first of all commonly.

But if the Plaintiff be a Farmer or Patentee under the Crown he must prove his Title, but if he have been any considerable time in possession, and the Title not controverted, the Judges seldom put the Plaintiff to shew any more Title but his bare possession and enjoyment, and that others pay him Tithes.

And so having shewed what is necessary the Plaintiff should be prepared to prove, I will proceed to shew what defence the Defendant may make.

Ex parte Defendantis.
Brown. 1. 34.

2 Inst. 649.

The Defendant upon the general issue of not guilty, &c. may prove that he duly set forth his Tithes, but if he afterwards carried them away it will not serve his turn; so if he sell his Corn privately to another, and after he has sold it privately, cuts and carries it away; the Action lies against the first Owner; the same Law is, where the Owner of the Land privately sells his
Corn

Corn to another who privately cuts and carries it away.

If there be two farmers sue and the Defendant pleads *nil debet*, and upon the trial prove an agreement with one of them, this shall bind his companion. More 915.

And the Defendant may prove that another has a better Title to whom he has paid his Tithes, or compounded with him for them.

Or he may prove that the Parson came in by Simony, or any other matter that makes his presentation, institution or induction void, or any other defect in not reading the Articles, &c.

Or he may prove that he set forth his Tithes, and a Stranger carried them away or may give in evidence, a Lease or Grant from the Plaintiff himself, or any other to whom he can make a good Title, but such Leases and Grants must be in writing unless for one year only, to the Owner of the Land, which hath been held good by way of retainer.

The Jury, if they find for the Plaintiff, Verdict. are to find how much of the debt demanded by the declaration is due to the Plaintiff, which they are to do by trebling the value of the Tithe subtracted, wherein they are usually assisted by the Court.

The judgment is always given for the debt found by the Jury without costs, because Judgment.

More 915.

Cro. Jac. 361,
362.Stiles 317,
318.

Nota.

Jurisdiction of
the Exchequer.

cause this Action is grounded upon a personal Law, where no action lay at Common Law, neither shall the Defendant have any costs, if the Verdict pass for him: But if the Jury should upon the Tryal give cost and damage, the Plaintiff may release them and take his judgment: But if Judgment be given for the Plaintiff in an Action brought upon this Statute by *nihil dicit*, *non sum informatus*, or demurrer, the Plaintiff shall have judgment for the whole debt demanded by his declaration. And if an Action upon this Statute be brought against two or more, and Verdict only pass against one, or part of the Defendants, the Plaintiff shall have Judgment against those against whom the Verdict passes, though the others be acquitted, *quod nota*.

Note that this Statute, as to the treble value and double value, extends only to Predial Tithes, and not to Personal, mixt, or other Church duties.

The Chancery likewise by English bill holds Plea of Tithes as may be made out by many precedents.

The Exchequer likewise by English bill holds plea for the single value, for subtraction of all manner of Tithes, Oblations, &c. of which great use hath been made since the late Wars, and there they decree the single value with costs, & the

the future payment, which is of great advantage to the Plaintiffs, and these Suits are not interrupted with prohibitions; but these Suits are often very costly too, for if a *modus decimandi*, or the bounds of the Parish come in question, and the proof not very clear, they are frequently sent to Trials at Law, which gives delay and increases the charges very much. This Jurisdiction I take it is much fortified since Tenth and First-fruits were annexed to the Crown: but Suits of this nature were rarely brought in this Court before the War, however there are some ancient Books prove that this Court on the Law side has assumed Jurisdiction of Tithes, but the reporter Reports it with a *quod mirum*.

38 Aff. p. 20.
44 E. 3. 43, 44.

Where the Kings Copy-holder pleaded a *modus* it must be tried in the Exchequer, and for this cause a prohibition was granted.

Lane 39.

Lastly, it is evident in our Books of Law, that the rights of Tithes were frequently determined at Common Law in Actions of Trespass for taking away of Tithes, unless both parties were Clergymen; and sometimes Assizes have been brought at Common Law for Tithes between Lay persons. And it is held in the 25 H. 8. that where the Lord of a Manor claimed Tithes in consideration of finding a Chaplain at such a Chappel, and the

50 E. 3. 20.
2 H. 4. 15.
20 H. 6. 17.
1. H. 6. 5.
2 E. 4. 5.
44 Aff. p. 25.
38 E. 3. 5.
22 E. 4. 24. 3.

25 H. 8. Br. Jurisdiction. 95.

the Parilhioners claimed them likewise upon the same consideration, that the right of these Tithes being between Lay persons Was triable at Common Law only.

38 E. 3. 5.

And at this day if Tithes be once let forth and divided from the Nine parts by the Owner of the Corn; and any person that has not right to them carries them away, the Suit for this Trespass must be in the Temporal, and not in the Spiritual.

Stat. 32. H. 8.
Cap. 7.

And by the Statute of 32 H. 8. it is enacted, that in all cases where any Person, &c. which then had, or then after should have any Estate of Inheritance, Free-hold, &c. in or to any Parsonage, Vicarage, Portion, Pension, Tithes, Oblations, and which then were, or then after should be made Temporal, or admitted to be, abide, and go to, or in temporal hands and Lay-uses, and profits by the Law, &c. should then after fortune to be disseised, deforced, wronged, or otherwise kept or put out from their Lawful inheritance, Estate, Seisin, Possession, Occupation, Term, Right or Interest, of, in, or to the same, or, &c. by any other Person, or, &c. claiming or pretending to have Interest or Title to the same, that then, and in every such case, &c. the Person, &c. so disseised, &c. the Heirs, Wives, &c. shall and may

may have their remedy in the Kings Temporal Courts, or other Temporal Courts as the Case shall require for the recovering, &c. such inheritance, &c. by Writs Original of *quod ei desorceat, præcipe quod reddat, Affise, &c.* as the Case shall require, &c. So that since this Statute the Case is put out of all doubt, that for such Tithes, &c. which are become Lay-fee, the right, Title and possession is become determinable at the Common Law, and all manner of real Actions, Ejectments and other personal Actions are brought there as the Case requires daily.

And now having shewed in how many Courts, and how many ways Tithes may be recovered, it calls to my mind the Fable of the Fox and the Cat who had but one way to shift for her self when the Hunts-men came, but that one proved better and more secure than all the shifts the Fox had boasted of; for upon the whole matter it were much better for the Reverend Clergy if they had one ready way to recover single damages with their costs of Suits at Common Law, where they might not be interrupted by Prohibitions, and clashing of Jurisdictions, and tost from one Court to another, than all these ways I have mentioned. And it is a wonder to me

me that there being hardly a Lord in Parliament, nor many of the House of Commons that have not some part of their Estates in impropriations, though they had no kindness to the Church, yet for their own intrest and concerns have not to that purpose preferred some Law in Parliament before this time; which might be done in a few lines by giving an Action of the Case at Common Law for the subtraction of Tithes with costs, or if the Parliament should think fit the smaller sort of Tithes might be determined in a Summary way by the Justices of Peace with an appeal to the Judges of Assize, but this I humbly submit as I do all the rest to better Judgments.

*The conclusion
of the whole.*

I have now finished this small Tract, whereby I wish the Reverend Clergy may receive as much satisfaction as I desire, or they can expect. And I shall now conclude all with a list of those Monasteries, the Lands of which are only capable to be discharged of the payment of Tithes, by Order, Bull, Prescription, real composition or otherwise, that every Clergy man may satisfie himself without further enquiry whether such Monastery Lands as shall happen to be in his Parish, &c. may have the benefit of the Statute of 31 H.8. to be freed of the payment of Tithes; and in the List following I have set down
the

the times of the foundations of the several Monasteries, that being material to know, for if they were founded since the first year of R. 1. they cannot prescribe in *non decimando*. I have also for the most part set down what order the Houses were of, that the Reader may satisfy himself whether they were of any of those Orders that were privileged from the payment of Tithes: for the valuations I have followed Mr. Dugdale, as being a sure Author, having observed many Errors in that of Mr. Speed.

In the perusal of this Catalogue you will find how many Foundations were made of Monasteries in the first Century after the conquest; and till the Reign of King John, that if they had continued at that rate, the greatest part, if not all the Land in England, had by this day been Monastery Land. But in King John's time they began to slack, and in the ninth of H. 3. the Statute of Mortmain was made, after which you will find but few Religious Houses (as they were called) founded.

The Cistercian order came into England about the year of our Lord 1128. and in the ensuing Table, you may see how well they prospered, that in so short a time there should be so many of the greater Abbies of that order.

Stow's Survey
of London.
930.

The Black Canons regular of St. Augustine first came into England as Mr. Stow says in the Year 1108: and were first placed in Trinity Church within *Algate London*. But I rather think he is mistaken in the time, for I find some Monasteries of that order before that time: However the ensuing Catalogue will inform you of their increase.

And it is without dispute that the increase of Monasteries, especially those of privileged Orders, tended very much to the prejudice of the Secular Clergy that had the Cure of Souls; for beside the orders that were privileged, they appropriated all the Churches they could obtain, and how ill they were served a man may in some measure observe that peruses the Statute of 15. R. 2. and 4 H. 4. for it appears by them that they endowed no Vicarage at all upon the appropriating Churches, or so meanly, that the Vicars could not live upon them, and not at all Hospitality practised. And therefore the Parliament of England which has always put a stop to the usurpations and exorbitances of Rome, and to prevent the Religious Houses destroying the Church, in the 15th Year of the Reign of King Richard the second made a Law, *That the Diocesan of the place where any Church was to be appropriated, should take care the Vicarage should be well and sufficiently endowed*

Endowment of
Vicarages.

15 R.2.cap.6.

endowed besides a Portion to the poor. But this Act not having the effect was desired and expected, the Bishops of those times being overawed by his holiness mandates, or participating too much of his qualities, a second good Act was made in the 14th Year of King H. 4. whereby it was enacted, ^{4 H.4. cap. 12} that all those appropriations, that were made since the former Statute without such endowments, were declared to be void. And that no Religious Person (that is; Monks and Friars) should be made Vicar in any Church appropriated, or to be appropriated by any means in time to come, and that no Vicarage should be appropriated by these Statutes, and divers other Statutes cited in this work upon several occasions. It is ealie to guess what opinion they had, even in the times of Popery, of these People called Religious Men.

I have now made too long a digression; and will therefore proceed to the Catalogue I promised the Reader.

E e

An

*An Appendix to the Twelfth
Chapter of the First Book,
page 177.*

I Did purposely omit in the last Edition of this book to speak of the repair of Chancels, lest I should have raised a question I could not determine; but the point has lately come in question judicially, and I shall tell the Reader now what I have learned on this subject.

Regularly the repair of the Chancel both by the Canon Law and Custom of *England* is to be made by the Rector or Parson of the Parish, which he is compellable to do by Ecclesiastical Censure, Suspension and Sequestration. But the great question in this case is, where there is an Impropiator, how to compel him to do it, the Rectories and Tithes in that case being become Lay-Fee, but this poynt coming lately in question in the Common-Pleas between *Walwin* and *Ambry* it was agreed to both by the Council that argued on both sides and the whole Court, first, that the Impropiators are chargeable with the repair of the Chancels. Secondly, that they may in the Ecclesiastical Courts be

P.29 Car. 2.
r/372. C. B.

be compelled by Ecclesiastical Censures to repair them, but the great question was, whether the Bishop might sequester the Tithes, they being now become Lay-Fee, which point by reason of some miscarriage in the pleadings did not receive a determination; many presidents were showed in poynt, that impropriate Tithe had been sequestred by the Ecclesiastical Judge in this case both before and since the War, and the better opinion seemed to be for the Sequestration, it being agreed that the Ecclesiastical Court has Jurisdiction of the cause, and that being one of the ordinary Process of that Court.

An Appendix to the Third Chapter of the Second Book.

THere was a Canon made by Robert Winchesey Archbishop of Canterbury and his Clergy in the year 1305. whereby it was decreed; that *Omnes & singuli parochiani integre & sine diminutione decimas inferius annotatas Ecclesiis suis persolvant; scilicet, decimam hactenus a primo tempore sue novationis tam mense Augusti quam aliis mensibus; de*

Ca. Sancta Ecclesia.

E e 2 proventibus

proventibus etiam boscurum pannagiis Silv-
varum & ceterarum arborum si vendan-
tur, vivariorum, piscationum, fluminum,
stagnorum, arborum, pecorum, columba-
rum, seminum, fructuum, & bestiarum
guarenarum, aucupii, hortorum, curi-
lagiorum, lane, lini, vini & grani, tur-
barum, in locis quibus fabricantur & fo-
diuntur, cygnorum, caponum, aucarum, &
anatum, ovorum, Theneii agrorum, apum,
mellis & cere, molendinorum, venationum,
artificiorum, negotiationum, nec non ag-
norum, vitalorum, pullorum, equorum
secundum eorum valorem, & omnium pro-
ventuum rerum aliarum de cetero satis-
faciant competenter Ecclesiis quibus tenen-
tur, nullis expensis ratione prestationis deci-
marum deductis, seu retentis, nisi tantum de
prestatione decimarum, & negotiationum,
Quod si monitionibus suis parere con-
tempserint, per suspensionis, excommuni-
cationis, & interdicti sententias eos ad
prestationem decimarum huiusmodi com-
pellant.

Verbo vivari-
orum,

This Canon being a Provincial Ca-
non of this nation, and by consequence
in force so far, as it is not crost by the
Common Law, Statute Law or Custom
of the place. I thought fit to insert,
though almost all the particulars therein
are spoken to in their proper places, save
that I have not met with *decima vivari-
orum* in any other Canon which the
Gloss

Gloss says, is *loca in quibus pisces pas-
cantur & impinguuntur*, and some time
it is taken * *pro loco ubi fere includuntur*
with which Sir Robert Stapelton's Jour-
nal partly agrees; but what Tithes are
to be paid for Vivaries, neither the Ca-
non nor Gloss tells us, and I as little can
give you an account what Tithes are due
for Curtilage. *Thenesii agrorum* Mr. Lind-
wood tells us, is *Arborum crescentium*
circa agros pro clausura eorum which by
the Common Law of England are to pay
no Tithe; for the rest I refer to the pro-
per Chapters.

* Sir Henry
Sepman Gloss *Spelman*
verbo vivari-
um.

Ours (p. 10) is a book of
 many of the same kind
 it is taken from the
 which which the Robert
 and partly correct, but
 to be paid for the
 and not of the
 the same as the
 for the same
 used for the
 and the same
 the same as the
 no other than the
 by the same

1850
 1851
 1852
 1853
 1854
 1855
 1856
 1857
 1858
 1859
 1860
 1861
 1862
 1863
 1864
 1865
 1866
 1867
 1868
 1869
 1870
 1871
 1872
 1873
 1874
 1875
 1876
 1877
 1878
 1879
 1880
 1881
 1882
 1883
 1884
 1885
 1886
 1887
 1888
 1889
 1890
 1891
 1892
 1893
 1894
 1895
 1896
 1897
 1898
 1899
 1900

Here follows a Catalogue of the several Monasteries, that upon the general Survey taken in the 26th year of H. 8. were returned to be of the annual value of 200 l. per ann. and upwards within England and Wales, and by consequence dissolved by the Statute of 31 H. 8. and by that means are capable of being discharged of the payment of Tithes; with the date of their Foundations, as near as I can compute, with what Orders they were of: In which observe, that A. stands for Abbey, P. for Priory, Ben. for Benedictines, Cist. for Cister-tians, Pram. for Præmonstratensis. Car. for Carthusians, C.S.A. for Canons of St. Austin, F. for Founded, T. for Tempore. and in the valuations I have rejected all ob. and q.

	Berks.	l.	s.	d.
R Eading Ben. F.T.H.I.		1938	14	3
Busham A.C.S.A.F. 13 E. 3.		0285	11	0
Abington A. Ben. F. 720.		1876	10	9
	Bedford.			
Newnham P.C.S.A.T.H.I.		0293	5	11
Elmestow A. Ben. F.T.W. Conquest.		0284	12	11
Wardon A. Cist. F. 4 Steph. 1138.		0389	16	6
Chicksand P. White C. Gilbertines F. T.				
W. Ruf.		0212	3	5
Dunstable A.C.S.A.F.T.H.I.		0344	13	3
Woburn A. Cist. F.T. Johannis Regis		0391	18	2
	Bucks.			
Ashrugge Coll. C.S.A.F.T.E. 1.		0416	16	4
Noteley A.C.S.A.F.T.H.I. 1112.		0437	6	8
Missenden A. Ben. F. 1293.		0261	14	6
	Cantabr.			
Thorney A. Ben. F. 972.		0411	12	11
Barnwel P.C.S.A.F.T.H.I. 1092.		0256	11	10
	Cestr.			
S. Werburge A. Ben. F. 1095.		1003	5	11
	E c 4		Comber-	

The Catalogue of Monasteries.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Combermeeve A.Cist.F. 1134.</i>	0225	9	7
<i>Cornub.</i>			
<i>Bodnim P.C.S.A.F. 936.</i>	0270	0	11
<i>Launceston A.C.S.A.T.W. Conquest.</i>	0354	0	11
<i>St. Germans A.C.S.A.F.T. Ethelstani</i>			
<i>Regis.</i>	0243	8	0
<i>Cumbr.</i>			
<i>Carlisle P.C.S.A.F.T.W. Ruf.</i>	0418	3	4
<i>Holmcoltrom A.Cist.F. 1135.</i>	0427	19	3
<i>Derb.</i>			
<i>Darley A.C.S.A.F.T.H.2.</i>	0258	14	5
<i>Devon.</i>			
<i>Ford A.Cist.F. 1133.</i>	0374	10	6
<i>Newham A.Cist.F. circa 1246.</i>	0227	7	8
<i>Dinckeswel A.Cist.F. 1201.</i>	0294	18	6
<i>Hertland A.C.S.A.F.T.H.2.</i>	0306	3	2
<i>Torre A.Prem.F.T.R.1.</i>	0396	0	2
<i>Buckfast A.Cist.F.T.H.2.</i>	0466	11	11
<i>Plimpton A.Cist.F.T.E.1.</i>	0241	17	9
<i>Tavestock A.Ben.F. 961.</i>	0902	5	7
<i>Exon P. Cluna F.T.H.1.</i>	0502	12	9
<i>Dorset.</i>			
<i>Abbotsbury Ben.F. circa 1016.</i>	0390	19	2
<i>Middleton A.Ben.F. per R. Ethelstan</i>	0578	13	11
<i>Tarrent A.Cist.F. per H.3.</i>	0214	7	9
<i>Shafton A.Ben.F. 941.</i>	1166	8	9
<i>Cerne A.Ben.F.T.R. Edgari</i>	0515	17	10
<i>Sherborne A.Ben.F. circa 370.</i>	0682	14	7
<i>Dunelm.</i>			
<i>St. Cuthbert A.Ben.F. circa 824.</i>	1366	10	9
<i>Tinmouth P. Ben.F.</i>	0397	10	5

Essex.

The Catalogue of Monasteries.

Essex.

l. s. d.

Berking A.Ben.F.680.	0862	12	5
Stratford Langthorne A.Cift.F.1135.	0511	16	3
Waltham A.C.S.A.F.circa 1060.	0600	4	3
Walden A.Ben.F.1136.	0372	18	1
St. Oswith A.C.S.A.F.1120.	0677	1	2
Colechester A.C.S.A.T.H.1.	0523	17	0

Glouc.

Bristol A.C.S.A.F.circa T.H.1.	0670	13	11
Hayles A.Cift.F.1246.	0357	7	8
Winchcomb A.Ben.F.787.	0759	11	9
Tewkesbury A.Ben.F.715.	1598	1	2
Cirencester A.C.S.A.F.T.H.1.	1051	7	1
Kingswood A.Cift.F.1139.	0244	11	3
Gloucester A.Ben.F.680.	1946	5	9
Lanthony P. juxta Glouc.C.S.A.F.1136.	0648	19	11

Hants.

St. Swithins Winton A.Ben.F.634.	1507	17	2
Hyde Abb.Ben.F.per Regem Elfred.	0865	18	0
Wherwel A.Ben.F.T.Edgari Reg.	0339	8	7
Romsey moniales Ben.F.907.	0393	10	10
Twinham P.C.S.A.F.ante 1042:	0312	7	0
Bello loco A.Cift.F.1204.	0326	13	2
Southwick P.C.S.A.F.T.H.1.	0257	4	4
Titchfield A.Prem F.T.H.3.	0249	16	1

Hertford.

St. Albans A.Ben.F.755.	2102	7	1
-------------------------	------	---	---

Hunts.

St. Neots A.Ben.F.circa T.H.1.	0241	11	4
Ramsay A.Ben.F.969.	1716	12	4

Kanc.

St. Austins prope Cant.A.Ben.F.605.	1413	4	11
Ledis P.C.S.A.F.1119.	0362	7	7

Fever-

The Catalogue of Monasteries.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Feversham <i>A. Clun. F. 1147. per R. Steph.</i>	0286	12	6
Boxley <i>A. Cist. F. 1144.</i>	0204	4	11
Roffen <i>A. Ben. F. 600.</i>	0486	11	3
Malling <i>A. Ben. per Regem Edm.</i>	0218	4	2
Derisford <i>A. C. S. A. F. 49 E. 3. per ips. R.</i>	0380	0	0
Lanc.			
Whalley <i>A. Cist. F. 1172.</i>	0321	9	1
Leic.			
Leicestr. <i>A. C. S. A. F. 1143</i>	0951	14	3
Croxden <i>A. Prem. circa T. R. 1. Reg.</i>	0385	0	10
Launda <i>A. C. S. A. F. T. W. Ruf.</i>	0399	3	3
Lincoln.			
Lincolne St. Cath. <i>P. Gilbert F. T. H. 2.</i>	0202	5	0
Kirkstead <i>A. Cist. F. 1139.</i>	0286	2	7
Revesley <i>A. Cist. F. 1142.</i>	0287	2	4
Thornton <i>A. C. S. A. F. 1139.</i>	0594	17	10
Bardney <i>A. Ben. F. 712.</i>	0366	6	1
Croyland <i>A. Ben. T. Reg. Esbelred. 716.</i>	1803	15	10
Spalding <i>A. Ben. F. 1052.</i>	0761	8	11
Sempringham <i>A. Gilb. f. 1148. 14. Steph.</i>	0317	4	1
Epworth moniale <i>Caribuf. 10 R. 2. fundat.</i>	0237	15	2
London and Midd.			
St. John Jerusale. <i>P. F. T. H. 1. 1100.</i>	2385	12	8
St. Barthol. Smithfield <i>C. S. A. F. 1102.</i>	0653	15	0
St. Mary Bishopsgate <i>Pr. F. 1187. 9 R. 1.</i>	0478	6	6
Clerkenwel <i>P. Ben. F. T. Reg. Steph.</i>	0262	19	0
London Minors <i>Ben. T. F. E. 1.</i>	0318	8	5
Westminster <i>A. Ben. F. T. Edgari</i>	3471	0	2
Sion <i>A. C. S. A. F. per Reg. H. 5.</i>	1731	8	4
London domus <i>Cart. fundat. T. E. 3. Reg.</i>	0642	0	4
S. Clare extra Algate <i>monial. F. 1292.</i>	0418	8	5
St. Mary			

The Catalogue of Monasteries.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>St. Mary Charter-house Carth. F. 1371.</i>	0736	2	7
<i>S. Johns Holwell monial. nigr. f. 1318.</i>	0347	1	3
<i>S. Mary East-Smithfield. A. Cist. F. 34 E. 3.</i>	0602	11	10

Northfol.

<i>Thetford A. Clun. F. 1103.</i>	0312	14	4
<i>Wymundham A. Ben. F. 1139.</i>	0211	16	6
<i>Hulmo A. Ben. F. per Canutum Reg.</i>	0583	17	0
<i>Westdreham A. Prem. F. T. H. 2.</i>	0228	0	0
<i>Walsingham A. C. S. A. F. circa T. Steph. R.</i>	0391	11	7
<i>Castle Acre A. Clun. F. 1090.</i>	0306	11	4
<i>Westacre A. Clun. F. T. W. Ruf.</i>	0260	13	7

Northon.

<i>Burgi S. Pet. A. Ben. F. per rofere R. Mer.</i>	1721	14	0
<i>Pipewell A. Cist. F. 1143.</i>	0286	11	8
<i>S. Andrew P. Clun. F. 1067.</i>	0263	7	1
<i>Sulby A. Prem. F. T. Steph. Reg.</i>	0258	8	5

Notts.

<i>Lenton P. Clun. fund. T. H. 1.</i>	0329	5	10
<i>Thurgarton P. C. S. A. F. T. H. 1.</i>	0259	9	4
<i>Welbeck A. C. S. A. F. T. Reg. Steph.</i>	0249	6	3
<i>Warsop P. C. S. A. fundat.</i>	0239	10	5
<i>Bella Valla Pri. Carth. F. circa 16 E. 3.</i>	0227	8	0
<i>Newstead P. C. S. A. F. T. E. 3.</i>	0219	18	8

These two last are under value in Mr. Dugdale,
but thus per Speed.

Northumbr.

<i>Tinmouth a Cell to St. Albans a Nunnery.</i>	0511	4	1
---	------	---	---

Oxon.

<i>Godstow A. Ben. F. T. Steph. Reg.</i>	0274	5	10
<i>Eynesham A. Ben. F. T. Eshelred Reg.</i>	0441	12	2
<i>Osney A. C. S. A. F. T. H. 1.</i>	0654	10	2
<i>Thama A. Cist. F. T. H. 1. per Speed.</i>	0256	13	7

Oxford

The Catalogue of Monasteries.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Oxford P. per Speed fund. ante Conq.</i>	0224	4	8
<i>Dorchester per eundem A.C.S.A.F. 635.</i>	0219	12	0
<i>Salop.</i>			
<i>Hagmond A.C.S.A.F. 1100.</i>	0259	13	7
<i>Lillestul A.C.S.A.F. per Adelfleda R. mercie.</i>	0229	3	1
<i>Wigmore A.C.S.A.F. 1172. per Speed.</i>	0267	2	10
<i>Wentlock P. Clun. F. 1181. vel antea.</i>	0401	0	7
<i>Salop. A.C.S.A.F. 1081. per Speed.</i>	0615	4	3
<i>Hales Owen A. Prem. fund. T.R. Job.</i>	0337	15	6
<i>Somerſet.</i>			
<i>Glaſſenbury A. Ben. circa 300 F.</i>	3311	7	4
<i>Bruton A.C.S.A.F.T. Conqueſt.</i>	0439	6	8
<i>Henton P. Carth. F.T.H. 3.</i>	0248	19	2
<i>Witham P. Cart. F. per H. 2.</i>	0215	15	0
<i>Taunton P.C.S.A.T.H. 1.</i>	0286	8	10
<i>Bathon A. Ben. F.T.H. 3.</i>	0617	2	3
<i>Keyneſham A.C.S.A.F.T.H. 1.</i>	0419	14	3
<i>Michelney A. Ben. F. 740.</i>	0447	4	11
<i>Buckland P. Ciſt. F.T.E. 1.</i>	0223	7	4
<i>Staff.</i>			
<i>De la cres A. Ciſt. F. 1153.</i>	0227	5	0
<i>Burton ſup. Trent. A. Ben. f. T. Eadredi R.</i>	0267	14	3
<i>Croxden A. Ciſt. cont. Fundat.</i>			
<i>Suffolk.</i>			
<i>S. Edmundi Bury A. Ben. F. 1020.</i>	1659	13	11
<i>Butley A.C.S.A.F. 1171.</i>	0318	17	2
<i>Sibeton A. Ciſt. F. 1150.</i>	0250	15	7
<i>Ixworth P.C.S.A.F.T. Conq.</i>	0180	9	5
<i>Surrey</i>			
<i>Merton P.C.S.A.F. 1121. T.H. 1.</i>	0957	19	5
<i>Shene P. Carth. F. 1414.</i>	0777	12	0
<i>Chertſey</i>			

The Catalogue of Monasteries.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Chertsey A. Ben. F. 666.</i>	0659	15	8
<i>Newark P.</i>	0258	11	11
<i>S. Maries Overf. A.C.S.A.F. 7 H.1.</i>	0624	6	6
<i>Bermundesey A.C.S.A.F. 7 H.1.</i>	0474	14	4
<i>Warw.</i>			
<i>Combe A. Cist. F. T. Steph. R.</i>	0311	15	1
<i>Kenelworth A.C.S.A.F.T.H.1.</i>	0538	19	0
<i>Merival A. Cist. F. 1148.</i>	0254	1	8
<i>Nuneaton monial. Ben. F. T. H. 2.</i>	0253	14	5
<i>Wilts.</i>			
<i>Malmesbury A. Ben. F. circa 670.</i>	0803	17	7
<i>Bradenstock P.C.S.A.F.T. Conq.</i>	0212	19	3
<i>Edington P. S.A.F. 1352.</i>	0442	9	7
<i>Ambresbury A. Ben. F. 1177.</i>	0495	15	2
<i>Wilston A. Ben. F. T. Ethelwolpi R.</i>	0601	1	1
<i>Fareley a Cell to Lewes per Speed F.</i>			
<i>1125. Clun.</i>	0217	0	4
<i>Lacock A.C.S.A.F. 1232. per Speed.</i>	0203	12	3
<i>Wigorn.</i>			
<i>Malverne A. Ben. F. 1083.</i>	0308	1	5
<i>Evesham A. Ben. T. Offe.</i>	1183	12	9
<i>Pershore A. Cist. F. 1138.</i>	0643	4	5
<i>Halesowen A. Prem. F. T. Job. Reg.</i>	0282	13	4
<i>Brodesly A. Cist. F. 1138.</i>	0388	9	10
<i>Eborum.</i>			
<i>St. Mary Eborum A. Ben. F. 2 W. Ruf.</i>	1550	7	0
<i>Selby A. Ben. F. T. Conq.</i>	0729	12	10
<i>Kirkstall A. Cist. F. 1147.</i>	0329	2	11
<i>De rupe A. Cist. F. 1147.</i>	024	2	5
<i>Monks Burton A. Clun. F. circa 1186.</i>	039	3	6
<i>Nostell A.C.S.A.F.T.H.1.</i>	0492	18	2
<i>Pomfret A. Clun. F. T. Conq.</i>	0337	14	8
<i>Gisborne</i>			

The Catalogue of Monasteries.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Gisborne A.C.S.A.F.T.Steph.R.</i>	0628	3	4
<i>Whitby A.Ben.F.T.Conq.</i>	0437	2	9
<i>Montegratie A.Carib.F.circa 1396.</i>	0323	2	10
<i>Newburge P.C.S.A.F.1145.</i>	0367	8	3
<i>Belland A.Cist.F.1134.</i>	0238	9	4
<i>Kirkham A.C.S.A.F.T.H.1.</i>	0269	5	9
<i>Melsa A.Cist.F.1136.</i>	0299	6	4
<i>Brilington C.S.A.F.T.H.1.</i>	0547	6	11
<i>Walton A.Gilbertines F.T.Steph.Reg.</i>	0360	16	10
<i>Bolton in Craven P.C.S.A.F.T.H.1.</i>	0212	3	4
<i>Rival A.Cist.F.1132.</i>	0278	10	2
<i>Fervall A.Cist.F.T.Steph.Reg.</i>	0234	18	3
<i>Furnes A.Cist.F.1127.</i>	0805	16	5
<i>De Fontibus Cist.F.1132.</i>	0998	6	8
<i>Warter P.C.S.A.F.T.H.1.</i>	0221	3	10
<i>Rishal per Speed.</i>	0351	14	6
<i>Old Maulton.A.F.T.Steph.R.per Speed</i>	0257	7	0
<i>St.Michael juxta Hull Carib. F.1377.</i>	0231	17	3
Wallia.			
<i>Valle de Sancta Cruce Com. Denbigh.</i>			
<i>Cist.F.T.E.1.</i>	0214	3	3
<i>Strata Florida Cardigansh.Cist.or Clun.</i>			
<i>F.T.Conq.</i>	1226	6	0

Gloria Deo Patri, Deo Filio & Deo Spiritui
Sancto. Amen.

THE

THE TABLE.

A	Acceptance of Rent, where it shall affirm a Lease, 138. Acceptance of Rent by a Parson, Vicar, or Prebend will not affirm the Lease of his Predecessor, 138. Where a Parson shall be bound by the acceptance of Fealty, 139. By a Bishop upon a Lease for Lives of Tithes. 139. Upon a Lease for years of Tithes how it shall operate. 139
Admission,	In what manner to be made, 8. Not to be done hastily, <i>ibid.</i> and 64. The danger thereof, 64
Aftermaths,	Where Tithes are due for them, 236
Agistment,	<i>Vide</i> Herbage.
Alteragium,	Quid, 221
Anates,	<i>Vide</i> First-fruits.
Archdeacons,	Their Original and growth, 287, &c. <i>Ocu- li Episcopii</i> & <i>quare</i> , 292. <i>Vide</i> plus de <i>cis</i> in pro- curations.
Arms and Ensigns of Honour in Churches,	<i>Vide</i> Churches.
Arrests in Churches or Church-yards,	<i>Vide</i> Churches.
Assessments for the repair of Churches,	<i>Vide</i> in Church.

The Table.

B

Barren Lands, Which shall be free from the payment of Tithes Corn and Hay. 326

Bees, What Tithes are due for them, 258

Bishop, What time he hath to examine a Clerk, 7. Admits a Clerk before the Church becomes litigious, 15. He is not bound by a Verdict in a Jure Patronatus, 18. An Action of the Case lyes against him if he admit the contrary Clerk, *ibid.* Coparceners present severally, which Clerk he must admit, 21. If Joint-Tenants, or Tenants in Common present severally, what's to be done, *ibid.* though the Church be litigious he may admit either Clerk at his peril, 16. What Office he may grant, and for what Term, 136. What Returns he may make upon a Duplex Querela, 17. he may grant Copyhold in Fee, 136. Vide in Church-Dilapidations. Non-residence, &c.

Burying and Burying places, Vide in Churches.

C

Canons against Common-Law, Customs or Prerogative are void, 48, 305. which Provincial Canons are in force, 305

Calves, Wool, Lambs, Pigs, Milk, How the Tithes thereof are to be paid, and the Canon for the payment thereof, 249. How the Tithes of Milk and Cheese are to be paid, 253. Sheep not kept 30 days shall pay no Tithes, 254. When Calves, Lambs, &c. are to be paid, 256. How to be paid where several mens Sheep are depastured together, 256. How where they

The Table.

They depasture in a Ground whereof the Parish is not known, 237.	How Wool, Lacks, Beltings, Neckings, and the Wool of Sheep that dye of the rot is to be paid.	256
Cathedraicum, Quid, and how it became due, 170.	not the same with Synodals,	287
Caveats, and the use and force of them,		17
Chancells, by whom to be repaired, and how to compel the repaire of them.		414, 415, 416.
Capella unde dicitur & quid, 191. The several kinds thereof, ibid. Free Chappels quid, ibid. all given to the King, 192. Who may make a Free Chappel, ibid. Parochial Chappel what, 192. How to be repaired, and by whom the cure is to be performed, ibid. the Rector of the Mother-Church shall have the Offerings made at Chappels, 194. How it may become a Church, 195. Who shall repair Chappels annex to Mother-Churches, 194. Private Chappels, Quid, 194. ought to be consecrated,		196
Charges, To what Charges Parsons and Vicars, &c. are chargeable,		277
Churches, Unde dicuntur, 167: The several acceptations of the word in the Scripture, 168. The manner of Founding them, ibid. Who may build a Church, 169. Where a Church must be re-consecrated, ibid. The several parts whereof a Church is compos'd, ibid. in whom the Freehold of a Church is, 169. Who is to repair Churches, 170. How they were anciently repaired, ibid. How the money is to be raised for the repair of Churches, 171. In what manner a Tax is to be made &c. ibid. How to be recovered, ibid. What to be done if the Parishioners will not make a Levie for the repairs of the Church, 172. How to be		relieved

The Table.

relieved against unequal Assessments, 172. The
 Landlord is not assessable towards the repair of the
 Church in respect of his Rent, *ibid.* The person is
 taxed in respect of the Land he holds, *ibid.* The
 prejudice by omission of any Landholder in a Tax to-
 wards the repair of the Church, 175. The Parson
 and Vicar are free from Levies towards repair of the
 Church, 175. And so may the Founder be by Prescrip-
 tion, *ibid.* Whether the Inhabitants within a Chap-
 pelry may prescribe generally to be free from Levies
 to the repair of the Mother Church, 176. Churches
 united, by whom to be repaired, *ibid.* Seats in the
 Churches, by whom built, and how to be repaired,
 177. In what manner to be built, *ibid.* Who may
 build Seats in a Church, *ibid.* Who shall have the
 materials of Seats pulled up, 178. What Authority
 the Parson has concerning Seats, and who may dispose
 thereof, *ibid.* Where they may be claimed by Prescrip-
 tion, 179, 180. One may prescribe for a burying
 place, 180. Who might anciently, and who may now
 be buried in the Church, 181, 182. Nothing to be
 paid for burying in the Church-yard, 181. But in the
 Church and Chancel, *ibid.* Where one of common
 right may be buried, *ibid.* anciently not in Cities,
 181. Who may set up Tombs in a Church, 182. What
 remedy if broken, *ibid.* Who may not be buried in
 Church or Church-yard, *ibid.* Gravestones, Winding-
 sheets, Penants, Arms, &c. In whom the property
 is, 183. In whom the property of the Bells and other
 Ornaments of the Church are, 183. Who shall have
 an Action of Trespass for the taking them away,
 183. How the property of Goods may be changed by
 the offering of them to a Saint, 184. Goods may be
 given

The Table.

given to the Church, and how, 184. What reverence
 is due to Churches and Church-yards, 184. Sanctua-
 ries what, and when taken away, 184, 185. Courts
 Fairs, Markets, &c. Not to be kept in Church or
 Church-yard, 185, 186. The punishment for fighting
 and brawling in Church or Church-yard, 186. The
 punishment for striking or drawing a Weapon there,
 186. De son assault Demesne is no plea to a Batte-
 ry begun there, 187. The punishment for making Ar-
 rests in the Church or Church-yard, 188. The several
 Officers that were in the Church in the time of Popery,
 ibid. Church-Wardens and their Duties, 189. By
 whom to be chosen, ibid. of Side-men and their Of-
 fice, 190. Sextons and Clerks and their Office, ib.
 How they shall be elected, ibid. The Parishioners may
 choose him by Custom, ibid.
 Clergy taken away in Sacrilege, 188
 Concubines allowed Priests, and in what manner, 146.
 Vide incontinence and Marriage of Priests, 146
 Confirmation of Bishops Leases, in what Cases necessary,
 122. How, where there is two Chapters, ibid. A
 Lease confirmed before the Sealing, 123. After the
 death of the Bishop, ibid. makes several concur-
 rent Leases, and the later is first confirmed, ibid.
 Grant to the King confirmed before enrolment, ibid.
 What is to confirm Leases where 'tis necessary, 124.
 The Parsons Leases confirmed by the Bishop who is
 Patron alone, 125. A Parson makes a Lease before
 he is inducted, which is confirmed, yet void, ibid.
 A Lease may be confirmed for part of the Land or
 term, ibid. A Parson makes a Lease which is con-
 firmed, and after he is deprived, 126. The Bishop
 and Husband of the Patroness confirms, Quid ope-
 rat;

The Table.

ratur, 126. The Bishop and the Patron being Tenant in Tail confirms and dies, quid operatur, 126. Patron usurper confirms, 126. Patron grants the next avoidance, and then confirms the Lease of the Parson, ibid. A Parson Leases to his Patron which is confirmed by the Bishop, and then assigned over by the Patron, ibid. The Bishop Patron confirms without the Dean and Chapter, Quid operatur, 127. A Parson made a Lease before the Statute of 13 El. which was confirmed after, ibid. A Prebendary Leases and recites that it is done by the Bishops consent who is a Witness to it, ibid. Lessee grants a Rent-charge, which is confirmed, 137. Parson Leases, the Lessee grants Annuity, and in a Writ of Annuity the Bishop and Patron are prayed in Aid, and Verdict and Judgment, Quid operatur, 137
Composition, Vide Real Composition.
Consecration of Churches, by whom to be done, 168. And when to be Re-consecrated, 169. Vide in Churches and Chappels.
Copy-hold, if it Escheate to the Parson and Lord, he may grant it in Fee, 137
Conveyances, By what Conveyances Tithes may be paid, 324
Corn, The Tithes thereof how to be paid, 235. Of Rakings, 236. Of Green-corn cut for Beasts of the Plow or Pail, 237
Custom, Of what force in Tithing, 266, 270. Custom De non decimando where good, 268. To pay Tithes of things not Tithable, 268

Difference

The Table.

D

Difference between it and Prescription, 269. How far the Canonists allow of Custom, *ibid.* Custom to pay less than the true value of the Tithes, 255. Customs confirmed by Act of Parliament, 271. Deprivation and deposition what, 101. In what Courts it may be done, *ibid.* For Waste or Dilapidation, 104. For Simony, 102. For Non-conformity, 104. For not Reading Common-Prayer within two months after Induction, 103. To maintain any Doctrine repugnant to the Thirty Nine Articles, 103. For Crimes Ecclesiastical and Civil, *ibid.* For disobedience to the Ordinary, 104. For taking a second Living, 104. For a Priest to Marry was Cause, *ibid.* Deprivation *Ipsa facto quid*, 105. For being a Common Drunkard, 102. For not using the Common-Prayer, and not Administrating the Sacraments according to it, 102. Miscreants, Infidels, Hereticks, &c. are deprivable, *ibid.* Slaves, Villains, and illeterate persons, *ibid.* Debt upon the Statute of 2 E. 6. By and against whom it lies, 400. The form of the Declaration, 403. What Plea lies in it, 406. What Evidence is necessary for Plaintiff and Defendant, 406. Verdict and Judgment is good therein, 409. Dignities Ecclesiastical *quid*, 61. Dilapidations, *Quid*, 92, 93. A Canon against them, 93, 94. What remedy against them, 94. Cause of Deprivation, 95. A Prohibition lies against a Bishop, and to prohibit Waste, 96. An Act of Parliament to avoid fraudulent Conveyances made to defeat, the remedy,

The Table.

remedy, 97. *An Action upon the Case lies at Common Law, 97. How the Damages recovered shall be disposed of, 98. The Trees in Church-yards not to be cut but in special Cases,* 99

Donative, quid, 208. A Parish Church may be a Donative, 204. How it may become presentative, 205. Who may be Founder of a Donative, 205. A Quare Impedit lies of a Donative, ibid. Within what Statutes it is, ibid.

Duplex Querela, In what Cases it lies, and what return is good upon it, 17. Within what time to be sued, 18

E

Exchequer has Jurisdiction of Tithes, 415
Excommunication Ipso facto, Whether without Sentence,

F

Farms not to be taken by Spiritual persons, but in particular Cases, 140. *A Parson may not Farm another's Parsonage, 140. May not keep a Tan-house or Brew-house,* 140

Fera natura, No Tithes due for Birds or Beasts Fera Natura, 259

Fees, What Fees are due by the Canon for Institution and Induction, 67. What Danger a Clerk incurs that pays greater Fees than are due by Custom, 66. No Fees are due or can be due for Orders, 68, &c.

First-fruits, Quid, 278. Why Vicarages are higher charged than Parsonages, 282. The Antiquity of them, 81.

Fish, Vide Fera Natura.

Fowls

The Table.

Ponds Domestick, What Tithes shall be paid of them? 264

Fowling, Vide Hawking.

Fruits, Vide Seeds.

ibid.

ibid.

Grove-stones, Vide in Church.

ibid.

H

AY, How to be paid, 235. In Orchards, ibid.

Grass cut in Meadows for Beasts of the Plow and

Pail, 236. Of Head-lands, Balks, &c. 236. Orchards,

Herbage, The Canon for it, 245. Who shall pay it, 246

Not for Saddle Horses, ibid. Not for Beasts of the Plow

or Pail, 246. Not for Beasts Fere Nature, 247. What,

shall be done where a Ground is eaten with mixt Cattel

248. For what Cattel Herbage is due, ibid. 248

Hany, Vide Bear.

Hawking, Hambling, Fishing and Fowling, What Tithes is

due thereof, 263

I

ncontinence, How punishable in the Clergy, 148, &c.

Vide Concubines.

Indicavit lay at the Common Law, And in what Cases,

395. For a Sixth part, 396. In what Cases it lies at

this day, 396. Not till after Libel, 397. The form

of the Writ not altered, 397. It lies of Offerings, 397.

Ff 4 By

The Table.

By whom, 389. The manner of proceeding in it, 390.
 When the matter shall be remitted to the Spiritual
 Court, 397. The form of the Writ, *ibid.* This Writ
 lies of a Vicarage, Parsonage, Prebend, &c. 397.
 Who shall have it, *ibid.*
 Induction, How to be made, 8. Who may make it, *ibid.*
 What is to be done after it, 9.
 Institution, In what manner to be made, 8. It may
 be done out of the Diocese, *ibid.* The virtue of
 it, 8, 9.
 Jure Patronatus, In what Cases it is necessary, 13.
 Whether the Bishop be bound to sue it at his own pe-
 tit, 14. It may be sued though the Church be not li-
 tigious, 15. The manner of proceeding therein, 18.
 The points inquirable in it, 19. How the Verdict is
 to be taken in it, 20. Quid operatur by the Ver-
 dict, 20. If the Jury refuse to give their Verdict,
 Quid fieri, 21. Who may hold it, 22. The Bishop
 himself may, *ibid.* If the Commissioners neglect their
 Duties, Quid fieri, *ibid.* The Verdict in it is not ob-
 ligatory, *ibid.* At whose Cost it is to be sued, 24.
 Jurisdiction, Vide Recovery, the Spiritual Court hath
 Jurisdiction by Simony, 85. In matters of De-
 privation, Depositions and Resignations, 101. For
 Mortuaries, 359. Confirmed by several Acts of Par-
 liament as to Tithes, 373. Where the Temporal
 Courts have Jurisdiction of Tithes, 371. And where
 the Spiritual, 370. Where Tithes were anciently
 determinable, *ibid.*
 King

The Table.

K

KING, If a Simonist dies possessor, the King shall not lose the Presentation, 62. The King may present upon a Simontacal Contract, though he cannot be guilty of it, 63.

L

L Ambrosius, Vide Calves.

Lapse incurred to the Bishop and the Patron presents, 11. If the Bishop may let a litigious Church lapse, 14. Where by the taking of a second Benefice, 26. From what time the 6 Months shall commence, 10. And how to be accounted, 9.

Leases, What Leases may be made by Clergy-men, 107. At Common Law, 108. By the Statute of 32 H. 8. 108. What quality such Leases must have, 110. They must be in Writing Indented, ibid. Must commence from the making, ibid. The old Lease must expire within a year, ibid. There must not be a double Lease, ibid. What things may be Leased, 110, 115. Not an Adowson, 110. It must be of Land usually let, 110. The usual Rent must be reserved, 111. Must not be without Impeachment of Wast, 112. Parsons and Vicars are excepted in the Statute of 32 H. 8. 112. Lease for 99 years if 3 Lives live so long as good within it, 112. Bishops are restrained by 1 Eliz. 113. Where such Leases shall only be voidable, 114. The 1 of Eliz. is a private Act, ibid. concurrent Leases by Bishops where good, 115. By others, and when they may be made, 117. Who is to confirm them, Vide Confirmation

The Table.

firmation. They cannot be for Lives, nor upon a Life,
 123. *In What Cases Deans, Prebends, &c. are re-*
strained by it, 117. Where upon a concurrent Lease
the former must determine within Three years, 117.
But not so for Bishops, 118. Where a Parsons Lease
shall be void by Non-residence, 118. Whether it shall be
void against himself, 130. Houses in Corporations
How to be Leased, 119. Not in Reversion, 120. What
Leases by Bishops and Archbishops are good, 103 By
Deans, Prebends and Colledges, in what cases they
are good, 105. From what time to commence, 104
Parson Leases and Resigns, 131. Parson Leases, the
Lease is confirmed, and then he becomes Non resident,
 129. *Bonds and Covenants for future Leases, in what*
Cases they are void, 132. And Promises, ibid. In
what manner Colledges and Hospitals may Lease, 133.
Where a Lease shall be good though a former be in be-
ing, 115. The former Lease surrendered between Seal-
ing of the New Lease and Livery of Seizin, 115. Lands
usually set together divided into several Leases and
Rents apportioned, 111.
Litigious, Where a Church shall be said to be Litigious, 13.
How many ways a Church may become Litigious, 14,
 15. *Where it may become Litigious by a Jure Patrona-*
 tus 14. *Where after a Jure Patronatus 15. The Bi-*
 shop may admit either Clerk without a Jure Patrona-
 tus at his peril, 16. *Vide Jure Patronatus, and*
Lapse.
 London, *How Tithes are to be paid there, 361. How an-*
 tiently, 361. *The Decree abridged, 362, &c. Cases*
put upon the Decree, 367.

The Table.

M

M *Arriage of Priests forbid by several Canons, 142. Prosecuted, By whom and how, 145. John De Crema that prosecuted this matter taken in Bed with a Wench, 144. How forbid by the Apostles Canons, 142. Made Felony to use their own Wives, or to keep them Company, 149. After this was mitigated, ibid. To Affirm a Priest might Marry made Heresie and Treason, 149. All Law against their Marriages repealed, and ther Children legitimated, 150. That All repealed, and at last revived, 150.*

Mast, Vide Seed.

Milk, Vide Calves.

Milnes, Whether any Tithes are due for them, and of what kind, 260

Modus decimandi, Vide Prescription.

Monastery Lands, In what Cases freed from Tithes, 334.

How many ways they may be dscharged, 336, &c.

What Orders were freed from the payment of Tithes,

335. In what Cases the lesser Abbys may be free, 340

Not of Lands purchased after 1215. 342. By Real

Composition, 331. By Bulls, 336. By perpetual uni-

ty 343. What shall be said a perpetual Unity, and

the qualities of it, ibid. Whether Lands that came to

the Crown after 31 H.8. can be freed, 345.

Mortuaries, Quid, and where due. 356. They are on-

ly by Custom, 359. Mortuaries by Bishops to the King,

quid, 359. Their several appellations, 360. In Chest-

er of a Priest, ibid. The Statute for payment of them,

357. Provincial Canon for them, 356.

Notice

The Table.

N

Notice of Resignation, &c. Where requisite, and how to be given, 12
Nurseries, Vide Wood.

Oblations and Offerings quid, and in what Cases due, 352
Ordinary, Vide Bishop.
Ornaments of the Church, Vide Church.

P

Parliaments of England restrained the Popes power, 27
Pardon of Simony, the effect of it, 63
Parson, Who may be so, 1, &c. he must be a Priest in Episcopal Orders, 70, he must subscribe before the Bishop the engagement, and have a Certificate of it, ibid. He must read the 39 Articles and how, ibid. He must declare his assent therunto, and in what manner, 71. The danger if he fail in any Circumstances, 72. Those things must be repeated upon taking a new Living, 73. Good advice to them, ibid. Of what Age a Parson must be, 70, 75. Who may be Parson of a Living of 30 l. per annum in the Kings Books, 76. He must be conformable, 77. When, and how oft he must use the Common Prayer, ibid. Before every Lecture, 78. The penalty for using other Forms, ibid. He must not maintain any Doctrine against

The Table.

against the 39 Articles, 79. What he must do before
 and after Institution and Induction, 77
 Personage or Rectory what, 197. Whereof it consists, 197
 Rectorialty, Quid & ubi dedit, 397
 Permutation, Quid, 208. The form of a Conditional
 Resignation upon a Permutation, 209. The profection,
 ib. If either Incumbent upon a Permutation be put
 out he may repair to his own Living again, 209
 Personal Tithe quid, and in what places due, 348
 Rigs, Vide Coluer.
 Pluralities, Quid, 23. Canons against them, 24. The
 mischiefs that attend them, 24. The acceptance of a
 second Living makes the first void, 26. As to the Pa-
 tron without sentence declaratory, 27. But not to
 lapse without notice, ibid. The Act of Parliament a-
 gainst Pluralities, 28. Which shall be said a Living
 of 8 pounds per annum, 29. That a Parson not qua-
 lified may have a plurality, 30. Who is qualified by
 service to have a plurality, ibid. And who by Birth,
 31. And who by Dignity, 32. He that takes a Pla-
 rality must have a Testimonial, 32. How to proceed in
 the taking a Plurality, 33. The first is void by Institu-
 tion into the second, 34. Which Chaplains are quali-
 fied, Where there is above the number allowed by the
 Statute retained, 34, 37. The Master dyes before the
 Chaplain is preferred, 35. The Mistress marries and
 becomes a Widdow again, ibid. Or marries under her
 Degree, 36. What Livings and Preferments make a
 Plurality, ibid. No body can have a double capacity to
 qualifie, ibid. Chaplains retained by the Son in the
 Fathers life time are not qualified, 36. Master dis-
 charges his Chaplain before he is preferred, 37. One
 qualified is instituted into the second before a Dispen-
 sation

The Table.

tion, 37. The King cannot dispence with this Law,
37. Inducted into a second Living and does not
read the Articles, 37. A Clerk qualified is made
a Bishop, his qualification ceases, 38. Where Union
shall make a Plurality, 38. A Vicar made Parson
of the same Church, or e converso, 38. Of another
Rectory in the same Church, 39. The ill effects of
taking Dispensations from the Pope, and giving it to the
Nobility, 40. How many qualifications there are
in England, 40. In Margine of what Livings Pla-
ralities were Originally allowed, 40. In what Ca-
ses the Canonists allow of Pluralities, 24. None may
have two Preferments in one Church, 25. Reasons
why the Nobility should waive this Prerogative of qua-
lifying for Pluralities. 41
Pope, Several Acts of Parliament to restrain his usur-
pations, 27. Charged with a damnable Custom in the
Court of Rome to use extortion, 27. charged with
the like by a Council, 28
Priests, Who may be, and at what Age, 76
Prescription and Modus Decimandi Quid, and why the
Ecclesiastical Courts reject Customs and Prescriptions
to the damage of the Church, 304. How Prescription
and Custom differ, 305. Confirmed by Parliament,
310. Prescription De modo decimandi, ibid. justifi-
fied by reason, 304. Who may prescribe in Non deci-
mando, 310. And who in Modo decimandi, ibid. A
Modus to do two things, and one fails, 313. For
Houses where good, 314. What Prescriptions are good,
314. &c. For Wool and Lamb where good, 315.
For Corn, 316. For Wood, ibid. For Calves and
Milk, 317. For Eggs. ibid. For Land in lieu of
Tithes ibid. For Headlands and Balks, 318. For
40. years possession of tithes is a prescription Bees,
allowed by the Ecclesiastical Court. pag. 229.

The Table.

Bees, 319. For Herbage, *ibid.* For Fensel, *ibid.* For Parks, 320. To pay the Vicar for Tithes due to the Parson, 321. How a Modus decimandi may be destroyed, 323. From what time Prescriptions shall commence, 337. How Prescriptions shall be proved, a posteriori, and practice since, 231.

Presentation, The form thereof, 6. How to be proceeded on, 7. What time the Patron has to present, *ibid.* Where his Clerk is refused for just Causes, 12.

Priviledge of the Clergy, they may not be compelled to serve in Temporal Offices, 151, 155. Are not bound to appear at the Sheriffs turn, 154. They are not to be Arrested in some Cases, 153, 157. Not to be disturbed whilst doing Divine Service, 151. Not to pay Toll, 153. Nor Pontage, Mirage, &c. 154. May sue in the Ecclesiastical Court for Batteries on their persons, 162. The Collector of Tenths may not disturb them, 155. Their Priviledge in Criminal Cases, 155. Freed from purveyance, 156. Not to be amerced for their Church Livings, 157. No Execution may be served on the Goods of the Church, 157. Their Priviledges confirmed by several Acts of Parliament, 158. What Priviledges they pretend to by the Canon and Civil Law, 159, &c. And what Priviledge they have in ground where the Tithes grow, 273.

Procurations, Quid, where due and how, 285. Not to the Arch-Deacon when the Bishop visits, 289, 286, &c. How many Servants are allowed the Visitors, 292.

Prohibitions, *Sur modus decimandi*, 385. For freeing Monastery Lands, 386. Where the Suit is for the Tithes of things not Tithable, 386. For matter triable

The Table.

ble at Law, 381. Because the Spiritual Courts proceed against Law and Reason, *ibid.* Must present a Copy of the Libel, 382. In what Cases the suggestion must be drawn up, 385. In what Cases a Prohibition is peremptory, 383. How to be prosecuted, 384. Where it lies after a Consultation, 389. Where a special consultation shall be granted, 385. In what Cases the suggestion is to be proved within six Months, 382. How the six Months must be accounted, 374. The Benefits and damages Prohibitions introduce, 389. How to prosecute and defend Prohibitions, 384. In what Cases it is grantable after Sentence, 385. Property, Where the property of a mans Goods shall be taken away by the offering of them to a Saint by a Stranger, 184. And in what Cases he may take such Goods again,

R

Réal Composition, quid, and the effects thereof, 331, &c.
 Recovery, In what Courts Tithes were anciently to be recovered, 369. In what Cases the Spiritual Court hath Jurisdiction concerning Tithes, 370. And in what Cases the Temporal Court hath Jurisdiction, 384. Where the Spiritual Court hath not Jurisdiction, 372. The Spiritual Jurisdiction confirmed by the several Acts of Parliament, 373, &c. The remedy where the Spiritual Courts are not obeyed before Sentence, 378. The remedy for disobedience after Sentence, 378. 2 E. 6. extends only to Prædial Tithes, 382. Observations on the Statute of 27 H. 8. 378. And on the Statute of 32 H. 8. 380. Upon all the Statutes, *ibid.* Vide Exchequer, and in Jurisdiction, *antea.*

Residence

The Table.

Residence is Jure Divino, 26. Non-residence was not heard of in the Western Church of 700 years after Christ, 80. An Act of Parliament against Non-residents, 83. The end of that Law, 84. Who may by that Law be Non-resident, 86. a Pluralists Master dyer, he may not be Non-resident, 87. How Bishops may be compelled to residence, ibid. Where a Parsons Lease shall be avoided by it, 118, 129. In what Cases he may demise and be Non-resident, 119. The penalty for Non-residence, and how to be recovered, 82. Complained of in Parliament, 81. The damage the Church suffers by the Non-residents, ibid. &c. The King may seize of the Temporalities of a Bishop for Non-residence, 88. The form of the Writ of seizure, ibid. The Epistle of Pope Damasus against Bishops Non-residence,

91

Resignation, To whom to be made,

207

It may be to the King, ibid. The several words of a Resignation, 208. It may be to a publick notary, or in his presence, or by proxie, ibid. It may be upon Condition, ibid. The form of it upon a permutation,

209

S

S *Eats in Churches, Vide Churches.*

Scire fac. In what Cases the right of Tithes was determinable in them, and how taken away,

399

Seeds, Fruit, Mast, Bees, How to be Tithed,

258, &c.

Simony Quid, 42. Canons against it, ibid. The little effect of those Canons, and the reason, 45. The difference the Canonists make between Simoniacus and

G g

Simoniac,

The Table.

Simoniace, 45. An Act of Parliament against it, 46. The penalty upon the corrupt Patron, 46, 48. Where he shall lose his Presentation, 46. The Clerk not privy where he shall be disabled, 50. What Contracts shall amount to Simony, 53, 60. Bonds for Resignation shall not, 54. Examinable in the Spiritual Court, 66. Advice against Bonds for Resignation, 58. Who may take advantage of it, 62. In giving above the due Fees for Institution, 64. For Resignation upon Exchange, 65. For corrupt giving Orders or License to Preach, 66. A Canon against this, and what Fees are to be taken, 67. How the Penalties are to be recovered, 67. The effect of a Pardon of Simony, 63. What Contracts are not Simoniackal, 60. Who are within the Law against Simony, 61. Not where the Contract is not executed, 62. If a Simonist die in possession, the King shall not lose his Presentments, 62. There may be Simony and the Patron and Clerk both free, 63. The Ecclesiastical Courts have the power to examine it, saved in the Stat. 65
Synodals, Quid & ubi, & cui debet. 286, &c.
Spoliation, Quid & ubi, 268

T.

T*enths, Quid, ubi & cui debet, 282. What remedy the Successor has for the Arrears in the time of his Predecessors, 284*
Tithes, Quid & quotuplex, 218. Majores, quid, 219. Minores quid, ibid. quo jure due, 220. To whom due, 222. The Parochial Right when it commenced, 223. Who is capable of them in perannuity, 229. Due to the Rector prima facie 230. Extraparochial, to whom due, 231. A Parson, &c. may have a Por- 260

The Table.

tion in another Parish, 230. To whom due in particular Cases, 232. To whom due in the Vacation, 233. If Parsons and Vicars shall pay each to the other, 233. Tithes may belong to a Chappel, 234. Of what things due, *ibid.* Of what not, 265. What Priviledge the Parson has in the Lands where they arise, 273

V

Vicarages, Of their Indowments before and within memory, 198. How to be expounded, 199. Indowed de Alteragio expounded to extend to small Tithes, 199. De minutis decimis, and expounded to Wood, *ibid.* Corn-Lands sowed with Woad, Saffron, &c. *ibid.* The Vicar shall not have Tithes of the Glebe of the Parson, nec e converso, 200. How the Indowment of Vicarages was introduced, 201. How they may be re-united to the Parsonages, 203. In what Cases they ought to be enlarged out of the Parsonage, 203. The Parson shall free the Vicar from Incumbrances, 204. How they may be dissolved and re-united, 203
 Visitations and matters concerning them, 298
 Voidance. Vide Simony. Pluralities, &c.
 Usurpation, A Caution to avoid it. 17

W

Winding-Sheets. Vide in Church.
 Wood, A Canon for the payment of Tithe-Wood, 237. Complaints against it in Parliament, 238. Limited by the Statute, *ibid.* Which was a Declaration of the Common Law, *ibid.* Questioned if an Act, and vindicated, *ibid.* Sylva cædua quid, 240. What shall be said

The Table

said great Wood, *ibid.* Of what Wood Tithes shall be paid, 241. Of Nurseries, *ibid.* Of Toppings, 242. Of Bark, *ibid.* Not of Dotards, *ibid.* Where due, if great and small Wood be mixt, 243. Who shall pay it the Buyer or Seller, *ibid.* Prescription in non decimando, where it is good, 244. How to be paid, 245. Where due of Wood that is grub'd, 242

Writs Mandatory for the payment thereof.

Wool and Lambs, How the Tithe thereof is to be paid, 250. Where Sheep shift Pasture from one Parish to another, 255. There shall be no Tithes paid in those Parishes where they are kept less than 30 days, 254. *Vide plus, in Calves before.*

A list of those Reverend Judges, and other Worthy Persons of the Inner-Temple that have Communicated their Learning for the publick benefit of the Professors of the Law.

THE Lord high Chancellor *Finch* his excellent Table to Sir *Henry Hobarts* Reports.
Mr. Justice *Littleton* his excellent Tenures.

Sir *Edward Coke* Chief Justice first of the C. B. and after of the K. B. Thirteen Books of Reports, his Four Books of Institutes, his Book of Entries, his Copyholder, and his Book of Bayles and Mainprize, and his reading upon Fines.

Sir *Edmund Anderson* Chief Justice of the Common Pleas Two Volumes of Reports.

Sir *John Vaughan*, Chief Justice of the C. B. his Arguments.

Sir *Roger Manwood*, Chief Baron of the Exchequer the Forrest Laws.

Sir *George Crook* one of the Judges of the K. B. three large volumes of Reports.

Serjeant *Rolls* two large Volumes of Reports in Common places.

Sir *John Bridgman*, Chief Justice of *Chester*, his Reports.

Sir *John Davies* his *Irish* Reports, and his Learning upon Impositions, and Tunnage, and Poundage.

Mr. *Selden* his History of Tithes, his *Mare Clausum*, and Titles of Honour, &c.

Kelway a Bencher, his Reports.

Mr.

Mr. Perkins, his excellent Book of Law.

Mr. Trotman's excellent Abridgment of Sir Edward Coke's Reports.

Mr. Symon Theloals digest of Writs.

Mr. Bullstrodes three Volumes of Reports.

Mr. West his Symboleography or Precedents. 2. Vol.

Mr. Brownlowes two Volumes of Reports, and two Volumes of Pleadings, and Judicial Writs.

Mr. William Stiles, a large Volume of Repors, and his Practical Register.

W. S. Golesburrowes Reports.

T. H. Mr. Plowden's Abridgment.

Mr. John Clayton, Pleas of Assize and Topicks.

Mr. Moiles Entries Printed in other Mens names and disguised.

Sir Richard Harpurs Reports common in M.S. but not Printed.

Mr. Keylys Records of the Tower.

Mr. Blunts Law Dictionary.

St. Germans Doctor and Student T. J. Bale scrip. illustr' Brittanice.

Sir Simon Degg, The Parsons Councillor, cum aliis.

A Catalogue of such Judges and others of Grays-Inn, as have published any Books of Law.

THe Lord Viscount Verulum his Elements of the Law, &c.

Sir Anthony Fitzherbert his great Abridgment, his *Natura brevium*, and Justice of the Peace.

Sir William Stamfords Pleas of the Crown.

Mr.

Mr. Justice Dalinſon ſome Reports in the end of
Relway.

Sir Henry Teluerton a Volume of Repors.

Sir Henry Finch his book of Law.

Mr. Kitchin his Court Leet and Court Baron.

Mr. Juſtice Jenkins *Rerum judicarum & Pacis con-*
ſulto.

Mr. Sergeant Callis his Readings.

Nr. *Aſhes* Tables and *Epieicea.*

Mr. Hughes Parſons Law great Abridgment and Re-
ports.

Mr. Leonards three Volumes of Reports.

Mr. Merſhes Reports.

Mr. Wingates Abridgment of the Statutes, &c.

Sir Thomas Heſleys Reports.

Mr. Billingsburſt, *cum aliis.*

*The Names of the Reverend Judges and others of
the Middle Temple, that have been kind to
their Profeſſion.*

Sir Robert Brooks excellent Abidrgment.

Sir John Pophams Reports.

Sir James Dyer's Reports.

Sir John Dodridge the Engliſh Lawyers dicourſe of
Wales, and compleat Parſon.

Sir Francis Mores Reports.

Sir Henry Calthrops Copyholder and Cuſtomes of
London.

Sir Richard Lanes Reports.

Mr. Edmund Plowden 2 Volumes of Reports and
Quere's.

Mr. Fleetwood Table to H. 7.

Mr.

Mr. *Richard Crompton's* Justice of the Peace and Jurisdiction of Courts.

Mr. *Shephards* Epitome, Justice of the Peace, Parsons guide, &c.

Mr. *Latches* Reports.

Mr. *Hakes* book of Law dedicated to O. C.

The Names of the Reverend Judges and other learned men of Lincolns-Inn, who have made us partakers of their Labours.

Sir *Henry Hobarts* excellent Reports.

Sir *James Leys* Reports.

Sir *Mathew Hales* his Epitome of Crown Law.

Mr. Justice *Rastals* excellent book of Entries, Abridgment of the Statutes, and Terms of the Law.

Mr. Justice *Owen's* Reports.

Mr. Justice *Jones's* Reports.

Mr. Justice *Winches* Reports.

M. *Sathams* Reports.

Mr. *Daltons* Justice of the Peace, and Sheriffs Office.

Mr. *Lamberts* Justice of Peace, Saxon Laws, Archetion, Office of Constable, and perambulation of Kent.

Mr. *Noyes* Reports falsely fathered, *ut puto*.

Mr. *William Pryn* Records of the Tower abridged, Writs and Pleas for the Lords, a Supplement to my Lord *Cokes* 4 Institutes, &c.

Mr. Sargeant *Bendloes* Reports common in M. S. part Printed.

Mr. *Wentworths* Office of Executors.

Mr. *Poultons* Elaborate and Learned Abridgegment of the Statutes and his *Pax Regis & Regni*.

F I N I S.

